(24,696)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 121.

JOHN ARMSTRONG CHALONER, PLAINTIFF IN ERROR,

vs.

THOMAS T. SHERMAN.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

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a United States Circuit Court of Appeals for the Secon Circuit.

JOHN ARMSTRONG CHALONER, Plaintiff in Error (Plaintiff Below),
against
THOMAS T. SHERMAN, Defendant in Error (Defendant Below),

Orig.

TRANSCRIPT OF RECORD.

Error to the District Court of the United States for the Southern District of New York.

1 *Stipulation as to Papers to be Printed in Transcript.*

United States District Court, Southern District of New York.

JOHN ARMSTRONG CHALONER, Plaintiff,
against
THOMAS T. SHERMAN, Defendant.

Pursuant to the rules of this Court, it is hereby stipulated that the following papers only of the papers on file in this action with the Clerk of said Court need be certified to the United States Circuit Court of Appeals for the Second Circuit as constituting the transcript of record to be filed with said Court on the appeal thereto taken by the plaintiff, by writ of error from the judgment entered herein on March 6, 1912.

1. Summons and complaint (filed August 16, 1904).
2. Answer (filed November 29, 1904).
3. Order amending title as to plaintiff's name (filed October 18, 1909).
4. Judgment (filed March 6, 1912).

2 5. Plaintiff's assignments of error (filed July 9, 1912).

6. Plaintiff's writ of error and order allowing the same (filed July 9, 1912).
7. Plaintiff's bill of exceptions and exhibits (filed October 16th, 1913).
8. Citation on appeal (filed July 9, 1912).
9. Stipulations as to exhibits (to be filed).
10. This stipulation.

Dated, New York, October 20th, 1913.

WILLIAM D. REED,
Attorney for Plaintiff.
EVARTS, CHOATE & SHERMAN,
Attorneys for Defendant.

3 *Summons.*

United States Circuit Court, Southern District of New York.

JOHN ARMSTRONG CHANLER
against
THOMAS T. SHERMAN.

To the above named Defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear, or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, at the Borough of Manhattan, in the City of New York, this 5th day of April in the year 1904.

JOHN A. SHIELDS, *Clerk.*

OSBORNE & HESS,
Plaintiff's Attorneys.

Office and P. O. Address, 27 William Street, Borough of Manhattan, New York City.

4 *Complaint.*

United States Circuit Court for the Southern District of New York.

JOHN ARMSTRONG CHANLER, Plaintiff,
against
THOMAS T. SHERMAN, Defendant.

The plaintiff, by Leo G. Rosenblatt, his attorney, complaining of the above named defendant, alleges:

I. That plaintiff is and at all times herein referred to was, a citizen of the State of Virginia, a resident of Cobham, in the County of Albermarle in said State, and a person of full age, sane mind and competent to manage his person, estate and affairs.

II. That defendant is, and ever since November 1, 1901, has been, a citizen of and resident of the State of New York.

III. That on or about November 6, 1901, a petition was presented to the County Court of the aforesaid County of Albemarle, in the State of Virginia, praying for an investigation into plaintiff's sanity, with a view towards ascertaining whether a committee should be appointed of his person and estate, and the said Court, after hearing and considering the evidence, duly determined and adjudged the plaintiff to be of sound mind and capable of managing his
5 person and estate, and made and caused to be entered in the office of the Clerk of said Court an order, bearing date No-

vember 6, 1901, dismissing the said petition and adjudging the plaintiff to be sane and competent to manage himself and his estate, and said order has never been vacated, reversed or in any particular modified.

IV. That heretofore, at various times prior to the commencement of this action, and since November 6, 1901, the above named defendant, falsely and wrongfully claiming to be thereunto authorized by virtue of an alleged appointment as committee of the person and estate of the plaintiff in and for the State of New York, did unlawfully take, collect, have and receive for the use of this plaintiff, but without the consent or authority of the plaintiff, divers sums of money, chattels and negotiable securities, the exact nature and amount whereof are well known to the defendant, but not accurately known to this plaintiff, but which include, among other things, the following moneys and property, to wit:

(*a*) All the rents and income of and derived from plaintiff's real estate situated in the State of New York, such rents and income, collected and received by the defendant as aforesaid, amounting in the aggregate to more than thirty-three thousand seven hundred and ninety-four 48/100 dollars.

(*b*) The sum of two thousand one hundred and seventy-nine 55/100 dollars in money received by the defendant from one Prescott Hall Butler on or about November 25, 1901, being money belonging to this plaintiff, but which the said Butler falsely, wrongfully
6 and unlawfully withheld from the plaintiff and claimed to have and to hold as a committee of the person and estate of the plaintiff.

(*c*) Divers sums of money, aggregating not less than thirteen thousand and eighty 15/100 dollars, being the income or issue of certain trust funds held and administered under the provisions of the last will and testament of John Winthrop Chanler, deceased, by Trustees therein named, and which income and issues were payable to the plaintiff as beneficiary of certain trusts in and by said last will and testament created for his benefit; the said Trustees having been induced by the defendant to pay over to him the said income and issues of said trust funds by the defendant's false and wrongful pretenses and representations that the defendant had been lawfully appointed a committee of the estate of the plaintiff, and was authorized as such committee to collect and receive such moneys on behalf and for the use of the plaintiff.

(*d*) The aggregate sum of not less than nineteen thousand five hundred and forty-one 47/100 dollars in money, being the proceeds and income of certain testamentary bequests and trusts made and created for the benefit of the plaintiff in, by and under the last will and testament of Laura A. Delano, deceased, which proceeds and income were payable under the provisions of said will to this plaintiff, but were in fact paid over to the said defendant by the Executors or Trustees of and under said last will and testament of Laura A. Delano, deceased, by reason and as the result of and in re-
7 liance upon the false and wrongful pretenses and representations of the defendant to the said Executors and Trustees,

that he, the said defendant, had been lawfully appointed and was a committee of the person and estate of the plaintiff, and as such committee was authorized to collect and receive said proceeds and income on behalf and for the use of the plaintiff.

(*e*) Divers negotiable securities and certificates of stock, being evidence of and representing the investments and interests of the plaintiff as a shareholder of the capital stock of certain business corporations, known respectively as The Self-Threading Sewing Machine Company of New York, The United Industrial Company, The Roanoke Rapids Power Company, which said securities and certificates were at all times herein mentioned, and are of the par and face value of two hundred and eighteen thousand, two hundred dollars; and the plaintiff is informed and verily believes that the actual value thereof then was and is not less than one hundred and fifty thousand dollars.

(*f*) Divers other sums of money and chattels, including household furniture, silverware, pictures and personal effects belonging to this plaintiff, and which are mentioned and described in the inventory and account hereinafter referred to, and including also the rents, income, issue and profits of the real and personal estate of the plaintiff, which the said defendant has collected and received since December 1, 1903, the date of said inventory and account, and of the verification thereof; and the plaintiff is informed and
8 believes that the total value of such divers other moneys and chattels is not less than the sum of twenty-five thousand dollars.

V. That on or about December 1, 1903, the defendant made and verified under his oath and caused to be filed in the office of the Clerk of the County of New York, in said State of New York, a certain written instrument or schedule containing, among other things, an inventory and account of the moneys and property of the plaintiff which he, the said defendant, claimed and admitted and still claims to have received and collected in his alleged character and capacity as a committee of the plaintiff's estate prior to the date of said verification; that for greater particularity concerning the money, chattels and security referred to as money and property of the plaintiff taken, collected, had and received by the defendant, the plaintiff begs leave to refer to the said sworn inventory and account of the defendant and all the foregoing allegations refer and are intended to refer to all money, tangible property and negotiable securities and choses in action which, prior to the commencement of this action the defendant, under color, claim or pretense of authority to act as a committee of the estate of the plaintiff, took into his possession and under his control, whether such taking, receipt or collection was prior or subsequent to the date of the making, verification and filing of the said inventory; this plaintiff being unable to state the exact nature or value of said money and chattels with greater certainty or particularity, because the defendant and the above-named Prescott Hall Butler as his predecessor in said pretended office as alleged committee have, ever since their pretended appointment as
9 such committee, refused to recognize or treat this plaintiff as a sane and competent person, and plaintiff has been and is

deprived of access to the sources of more accurate information and depended entirely upon the defendant himself for further and particular information concerning the nature, condition and value of the plaintiff's real and personal estate.

VI. That the defendant obtained, took, collected, had and received, ostensibly for the use and on behalf of this plaintiff, all of the aforesaid money, chattels and negotiable securities and choses in action, by falsely claiming, pretending and representing that he was duly and lawfully authorized and empowered so to do by virtue of an alleged order of the Supreme Court of the State of New York, bearing date November 19, 1901, and entered and filed on the same day in the office of the Clerk of the County of New York in said state, whereas the fact was and is that said order was made and entered without any notice whatsoever to this plaintiff and solely upon the petition of Prescott Hall Butler, and the written consent of the defendant, such petition and consent bearing even date with the said order; that the said alleged order of November 19, 1901, was and is absolutely null and void; that said Supreme Court of New York, at the time of making said order, had no jurisdiction either of the person or over the property of this plaintiff sufficient to justify, warrant or authorize the making of the said order of November 19, 1901, or of any order whatsoever appointing a committee either of the person or of the estate of the plaintiff.

VII. That said order of November 19, 1901, purported on
10 its face to be an order appointing the defendant a committee of the person and estate of the plaintiff to succeed the above-named Prescott Hall Butler, whose resignation as such committee was simultaneously accepted in and by the same order; that said Butler, in whose place and stead the said defendant was thus intended to be appointed, claimed and pretended to have been appointed as such committee in and by a previous order of the same Court, bearing date, filed and entered June 23, 1899; that said order of June 23, 1899, however, was likewise absolutely null and void and was made and entered without lawful or reasonable opportunity to plaintiff to appear or to be heard, and the said Supreme Court of New York, at the time of making the same, had no jurisdiction of the person or estate of the plaintiff sufficient to justify, authorize or warrant the making of said order or any order appointing a committee of plaintiff's person or estate; that the proceedings recited in the said order of June 23, 1899, upon which depended the validity of said order and of the subsequent order of November 19, 1901, was absolutely null and void and in nowise binding upon this plaintiff and were insufficient to give to the Supreme Court of the State of New York jurisdiction either of the person or of the estate of this plaintiff, or jurisdiction to adjudge this plaintiff, an incompetent person, either as provided in the statutes of the State of New York, or otherwise; and that in so far as the said statutes of the State of New York authorized, directed or sanctioned the said proceedings as a basis for the making of either of said orders by said Supreme Court, or authorized the said Supreme Court to adjudge this
11 plaintiff an incompetent person or to sequester his property, or to appoint a committee of his person and estate or of either,

as a result of such proceedings, the said statutes were and are repugnant to and in contravention of the Constitutions of the State of New York and of the United States of America, and are absolutely illegal and void.

VIII. That the proceedings recited in said order of June 23, 1899, as justification therefor, and as foundation thereof, being the only proceedings on which the said Supreme Court, in the making of said order, claimed or could claim to exercise jurisdiction of the person or estate of this plaintiff, were instituted, prosecuted and determined without lawful or reasonable opportunity to plaintiff to appear or to be heard and therefore without lawful or reasonable notice to this plaintiff and constituted an attempt and tended to deprive plaintiff of his liberty and property without due process of law, and were so instituted, prosecuted and determined at the time and during a period when this plaintiff, by virtue and under color of an illegal order of said Supreme Court, and with full knowledge, consent and connivance of such Court and its officers and agents, and of the parties who instituted said proceedings, was unlawfully and falsely restrained and imprisoned in a certain prison house, popularly known as Bloomingdale Asylum, at White Plains, in the County of Westchester, in said State of New York, said asylum being a private institution, owned and conducted by a private corporation, and said plaintiff, as an inmate and prisoner in said asylum, was unlawfully and forcibly detained and kept in the custody and charge
of the superintendent of said asylum, acting as the agent of
12 said private corporation; and during the pendency of the said proceedings in said Supreme Court of New York this plaintiff was at all times under duress of imprisonment and absolutely subject to the orders and control of said corporation, or of its superintendent, and at no time during the pendency of said proceedings was the plaintiff free to appear, either personally or by counsel, before the said Supreme Court or any officer or officers thereof, or any commissioner, commissioners or jury thereof, without the consent and direction of the said superintendent of said asylum, except upon the order of said Supreme Court, and no such direction was given by said superintendent, nor was any such order of said Supreme Court made or given by said Supreme Court and in and during the entire proceedings this plaintiff, with the knowledge, consent and co-operation of said Supreme Court, and its judges, commissioners or agents, was forcibly, wrongfully, unlawfully and in violation and defiance of his constitutional rights and privileges, deprived of the power and opportunity to act, write or speak freely, and to freely communicate or consult with counsel or to appear or attend before the said Supreme Court or before its commissioners or jury, or to confront the parties who had instituted and prosecuted the said proceedings in said Supreme Court, and had therein charged the plaintiff with lunacy and incompetency, or to ascertain the nature of the charges made against him, or to hear the testimony offered in support thereof, or to cross-examine the witnesses hired and produced by the petitioners therein to give such testimony; and at no time, either preliminary to or during the pendency of

said proceedings, was the plaintiff personally inspected, interviewed, examined or in anywise communicated with by any of the
13 judges or officers of the said Supreme Court, or by any of the commissioners or any of the jury to whom the said Supreme Court in the course of said proceedings, delegated the function of inquiring whether or not this plaintiff was sane and competent; and that, by reason of the premises, the said proceedings in the said court were, and each and every step therein was, unlawful, unconstitutional, and absolutely null and void. That the said custody and unlawful imprisonment of the plaintiff were the result solely of force and fraud exercised and employed by the person who instituted the aforesaid proceedings in the said Supreme Court, in that said persons, shortly prior to March 10, 1897, caused the plaintiff to be lured by false and treacherous statements and promises from his home, in the State of Virginia, to a hotel in said City and County of New York, where plaintiff was, on or about said March 10, 1897, temporarily sojourning, in consequence and reliance upon the urgent request of an agent of said persons and upon the promises of such agent, accompanying such request, that plaintiff's presence in said City and County of New York was desired by such agent solely and exclusively for convivial purposes, whereas the fact was and is that said agent was instructed by the said persons and intended and desired to lure and bring the plaintiff away from the State of Virginia and into the State of New York for the sole and exclusive purpose of giving to the said Supreme Court of New York ostensible and colorable jurisdiction over the plaintiff's person, and of falsely, fraudently and unlawfully inducing and enabling said Supreme Court to arrest and imprison the plaintiff, or cause his arrest or imprisonment as an alleged
14 insane person, but that, by reason of the premises, the order of commitment, made by said Supreme Court on March 10, 1897, was and is invalid and illegal; that said order of March 10, 1897, was made without notice to this plaintiff, and without any opportunity given to him to oppose or contest the making thereof, and without permission to plaintiff to appear before said Court in person or by counsel, but, on the contrary, said Supreme Court in and by said order of March 10, 1897, expressly directed that no notice be given to the plaintiff thereof or of the application therefor, and that therefore said order of March 10, 1897, was a violation of plaintiff's inalienable rights and privileges as a citizen of said United States and of the State of Virginia, and was repugnant to the Constitutions of said United States and of the State of New York, and was and is absolutely null and void, and all acts done thereunder, and especially the acts of the above-mentioned corporation and its superintendent of said prison house, in making and keeping plaintiff a prisoner at all times during the pendency of the proceedings above mentioned as the alleged foundation of said alleged orders of June 23, 1899, and November 19, 1901, were wholly unauthorized, wrongful, illegal, null and void.

IX. That notwithstanding the illegality, invalidity and nullity of the said orders of the said Supreme Court and of the aforesaid

proceedings conducted therein, and upon which said orders were based, the defendant claiming to be, by virtue thereof, a committee of the persons and estate of the plaintiff in and for the State of New York, and under color of the said orders and proceedings, not only took, collected, had and received the aforesaid moneys and
15 other property of this plaintiff, but has, without the consent or authority of this plaintiff, retained and withheld and still retains and withholds the same from this plaintiff and has failed and refused and still refuses to turn over and pay the same to this plaintiff, although requested by the plaintiff to surrender and pay over the same; that on April 4, 1904, at the City of New York, plaintiff, by Osborne & Hess, his attorneys, demanded of and from the defendant the delivery to the plaintiff or to his said attorneys of all moneys, securities, title, deeds and other property, principal and income which defendant was then withholding from plaintiff under color of said alleged proceeding in which defendant claimed to have been appointed a so-called Committee, and then and there notified him that failure on his part to respond at once to said demand would be treated by the plaintiff as a refusal to comply with such demand. That said demand was wholly ignored by the defendant and no response was ever made thereto, nor has the said defendant complied or offered to comply therewith, and the defendant has retained and appropriated and converted to his own use all of the said moneys and other tangible and negotiable property of the plaintiff, and unlawfully and wrongfully deprived the plaintiff of the use and value thereof.

X. That by reason of the premises and of the aforesaid wrongful and illegal acts and misconduct of the defendant, the plaintiff has suffered injury and damage in the sum of not less than two hundred and sixty-three thousand five hundred and twenty-three 65/100 dollars, with interest thereon from April 4, 1914.

16 Wherefore, plaintiff demands judgment against the said defendant for the said sum of two hundred and sixty-three thousand five hundred and twenty-three and 65/100 dollars, with interest from April 4, 1904, besides the costs and disbursements herein.

LEO. G. ROSENBLATT,
Plaintiff's Attorney.

Office and Post Office Address 52 William Street, Borough of Manhattan, New York City.

COUNTY OF ALBEMARLE,
State of Virginia, ss:

John Armstrong Chanler, being duly sworn, says: That he has read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes the same to be true.

JOHN ARMSTRONG CHANLER.

Sworn to before me this 9th day of August, 1904.

H. W. WOOD,
Notary Public, Albemarle Co., Va.

My term expires April 15, 1908.

STATE OF VIRGINIA,
County of Albemarle, ss:

I, W. L. Maupin, Clerk of the Circuit Court of the County of Albemarle, in the State of Virginia, the same being a court
17 of record, do certify that H. W. Wood, whose genuine signature is affixed to the foregoing and annexed certificate, was at the time of signing the same a Notary Public in and for the County and State aforesaid, duly commissioned and qualified according to law and authorized to take proof and acknowledgement of deeds and other instruments of writing.

His commission expires 15 day of April, 1908.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court this 9th day of August, 1904.

[SEAL OF VA.] W. L. MAUPIN, *Clerk.*

Answer.

United States Circuit Court, Southern District of New York.

JOHN ARMSTRONG CHANLER, Plaintiff,
against
THOMAS T. SHERMAN, Defendant.

Thomas T. Sherman, the defendant in the above-entitled action appearing therein by Evarts, Tracy & Sherman, his attorneys, answers the plaintiff's complaint in said action as follows:

First. The defendant, upon information and belief, denies each and every allegation contained in Paragraph I of said complaint, except the allegation therein contained that the plaintiff is
18 a person of full age.

Second. The defendant admits each and all of the allegations of Paragraph II of said complaint.

Third. The defendant denies that he has any knowledge or information sufficient to form a belief as to the allegation contained in Paragraph III of said complaint that the alleged order therein mentioned, if any such order was ever made, has never been vacated, reversed or in any particular modified, and upon information and belief the defendant denies each and every other allegation contained in said Paragraph III of said complaint.

Fourth. The defendant denies each and every allegation contained in Paragraph IV of said complaint.

Fifth. The defendant denies the allegation contained in Paragraph V of said complaint that the plaintiff has been and is deprived by the defendant of access to any sources of information as

to the plaintiff's property, and denies that for any reason in that behalf in that paragraph of said complaint alleged, the plaintiff is or has been unable to state with certainty or particularity the exact nature or value of the money or chattels in said complaint referred to, and denies that the plaintiff is dependent entirely upon the defendant for information concerning the plaintiff's real and personal estate.

Sixth. The defendant denies each and every allegation contained in Paragraph VI of said complaint, except the allegations therein contained that the order of the Supreme Court of the State
19 of New York bearing date and entered in the office of the Clerk of the County of New York on the nineteenth day of November, 1901, mentioned and referred to in said paragraph, was made without notice to the plaintiff and upon the petition of Prescott Hall Butler and the written consent of this defendant to be appointed and to act as committee of the person and property of the plaintiff; and he denies that said order was made solely on said petition and consent.

Seventh. The defendant denies each and every allegation contained in Paragraph VII of said complaint, except the allegation therein contained that the said order dated the nineteenth day of November, 1901, purported on its face to appoint the defendant committee of the person and estate of the plaintiff, and accepted the resignation of the said Prescott Hall Butler as committee of the person and property of the plaintiff and that the said Prescott Hall Butler claimed to have been appointed committee of the person and estate of the plaintiff by an order of the said Supreme Court of the State of New York, bearing date, filed and entered June 23, 1899.

Eighth. The defendant, upon information and belief, denies each and every allegation contained in Paragraph VIII of said complaint, except the allegation therein contained that the plaintiff was on or about the tenth day of March, 1897, in a hotel in the County of New York, and except that he denies that he has any knowledge or information sufficient to form a belief as to the allegation in said Paragraph VIII of said complaint, that the order of the Supreme Court bearing date the tenth day of March, 1897, mentioned
20 and referred to in said paragraph of said complaint, was made without notice to the plaintiff.

Ninth. The defendant denies each and every allegation contained in Paragraph IX of said complaint, except the allegation that under and by virtue of the said orders of the Supreme Court of the State of New York, dated respectively the twenty-third day of June, 1899, and the nineteenth day of November, 1901, he has claimed, and now claims, to be the duly appointed committee of the person and estate of the plaintiff, and that under and pursuant to such orders he has as such committee taken, collected and received certain moneys and property of the plaintiff situated in the State of New York, and has retained, and still retains, such part thereof as has not been paid to or for account of the plaintiff or for expenses of administration of the trust thus imposed upon the defendant, and that he has refused, and still refuses, to turn over and pay the same to the

plaintiff, and that on or about the fourth day of April, 1904 (the day before this action was begun), Osborne & Hess, claiming to be the attorneys for the plaintiff, made a certain demand in writing upon the defendant, and that the defendant made no response to said demand and has not complied or offered to comply therewith; but for greater certainty as to the contents of such demand in writing, the defendant begs leave to refer to the original, or to a duly authenticated copy thereof, when the same shall be produced upon the trial of this action; and the defendant, upon information and belief, denies that at the time of the making of such demand, the said Osborne & Hess were attorneys of the plaintiff or in
21 making such demand acted under his instructions; and he denies that he has retained or appropriated or converted to his own use the moneys and other tangible and negotiable property mentioned in the complaint or any moneys or other property of the plaintiff or has wrongfully deprived the plaintiff of the use or value of any such moneys or other property.

Tenth. The defendant denies each and every allegation contained in Paragraph X of said complaint, and denies that, by reason of any act of the defendant, the plaintiff has suffered any injury or damage whatever.

Eleventh. And for a second and further and separate defense the defendant alleges that, at all of the times mentioned in said complaint and at the time of the commencement of this action the defendant was and now is a citizen of the State of New York and a resident of the Town of Rye, in the County of Westchester in said State, and he alleges, upon information and belief, that at all of such times, the plaintiff was, and now is, a citizen of the State of New York and a resident of the City of New York and County of New York, in said State; and that by reason thereof this Court has no jurisdiction of this action or of the plaintiff's said alleged cause of action, or of the parties to this action or of the subject matters thereof.

Twelfth. And for a third and further and separate defense to the plaintiff's said alleged cause of action, the defendant alleges, upon information and belief, that on or about the tenth day of March, 1897, under and pursuant to Chapter 545 of the Laws of 1896 of the State of New York, Winthrop A. Chanler and Lewis S. Chan-
22 ler, two of the brothers of the plaintiff, and Arthur A Carey, a cousin of the plaintiff, presented their petition, duly verified on that day to Hon. Henry A. Gildersleeve, one of the Justices of the Supreme Court of the State of New York in and for the County of New York, and of the Judicial District in which the plaintiff then resided and then was, entitled "In the matter of an application for the commitment of John Armstrong Chanler an alleged insane person," containing a statement of the facts upon which the allegation of insanity therein contained was based, and because of which the application for an order adjudging the plaintiff herein to be insane and committing him to Bloomingdale Asylum at White Plains was made accompanied by a certificate of lunacy made by M.

Allen Starr, M. D., and Eugene Fuller, M. D., two reputable physicians, each of whom was a graduate of an incorporated medical college, who had been in the actual practice of his profession at least three years prior to the making of such certificate, and had filed in the office of the State Commission in Lunacy in the State of New York a certified copy of the certificate of a Judge of a court of record of the State of New York, showing his qualifications as medical examiner in lunacy, that they had jointly made a final examination of the said plaintiff upon the said tenth of March, 1897, the date of such certificate, and such certificate contained the facts and circumstances upon which the judgment of the said physicians was based, and showing that the condition of the said plaintiff was such as to require care and treatment in an institution for the care, custody and treatment of the insane, which petition and certificate were duly made in the manner and form in such case prescribed by the
23 laws of the State of New York; that such proceedings were duly had upon said petition and certificate, that on the said tenth day of March, 1897, an order was duly made by said Justice, to whom jurisdiction in that behalf appertained, ordering and adjudging that the said plaintiff was insane, and that he be committed to the said Bloomingdale Asylum, at White Plains, in the State of New York, an institution for the custody and treatment of the insane, and that such order or judgment of said Justice has never been appealed from, modified, superseded, annulled or set aside, and at all times since the making thereof has remained and is now of full force and effect; that under and pursuant to said order or judgment the said plaintiff was committed to the said asylum, where he remained until on or about the twenty-eighth day of November, 1900, when he escaped and fled therefrom and from the State of New York; that on or about the ninth day of May, 1899, pursuant to the provisions of law in that behalf the said Winthrop Chanler and Lewis S. Chanler, brothers of the plaintiff, John Armstrong Chanler, presented their petition, duly verified on the eighth day of May, 1899, to the Supreme Court of the State of New York, at a Special Term of said Court in and for the County of New York, in the State of New York, in which County the said John Armstrong Chanler then resided entitled "In the Matter of John Armstrong Chanler, an alleged incompetent person," alleging, among other things, that the said John Armstrong Chanler formerly resided at the Kensington Hotel, Fifth Avenue and Fifteenth Street, in the Borough of Manhattan, in the City of New York, and that on the tenth day of March, 1897, the said John Armstrong Chanler was ad-
24 judged insane and committed to the Bloomingdale Insane Asylum at White Plains, New York, by the Hon. Henry A. Gildersleeve, one of the Justices of the said Supreme Court of the State of New York, and that since the said tenth day of March, 1897, and some time previous thereto, the said John Armstrong Chanler was, and has ever since been, of unsound mind and so far deprived of his reason and understanding as to be altogether unfit and unable to govern and manage his affairs, and had been at times frequently

violent and dangerous to himself and to those about him, and that he was, within the meaning of Title VI, Chapter 17, of the Code of Civil Procedure, an incompetent person, and praying that Stanford White, or some other suitable and proper person, might by the order and judgment of said Court, be appointed committee of the person and of the property and estate of the said John Armstrong Chanler as an incompetent person, which petition was duly accompained with proof, by affidavits, that said case was one of those specified in said title of said Code; that under and pursuant to an order of said Court, bearing date the ninth day of May, 1899, due notice in writing that upon the said petition and affidavits an application would be made to said Court at a Special Term thereof at the County Court House in the County of New York, in the State of New York, on the nineteenth day of May, 1899, at half-past ten o'clock in the forenoon of that day or as soon thereafter as counsel could be heard, for an order granting the prayer of said petition, was personally served on the ninth day of May, 1899, upon the said John Armstrong Chanler in the manner prescribed by the laws of said State and by said order, by delivering to, and leaving with
25 the said John Armstrong Chanler, in person, at the Bloomingdale Asylum in the Village of White Plains, in the County of Westchester, in the State of New York, true copies of said notice and order and petition and affidavits and at the same time and place delivering to, and leaving with Dr. Samuel B. Lyon, the person in charge of the said asylum, in person, true copies of said notice, order, petition and affidavits, and that notice of such application was also given in the manner prescribed by the laws of said State and by said order to Margaret Chanler, Alida Emmet, William A. Chanler, Robert W. Chanler and Elizabeth W. Chapman, two brothers and the sisters of said John Armstrong Chanler, who with the said Winthrop Chanler and Lewis S. Chanler were all of the heirs at law and next of kin of said John Armstrong Chanler; that thereafter such proceedings were duly had in said proceeding that on the nineteenth day of May, 1899, the said Court, at a Special Term thereof, held at the County Court House in the County of New York, in the State of New York, duly made an order bearing date on that day directing that a commission in the nature of a writ de lunatico inquirendo be issued out of and under the seal of said Court in the usual form directed to David B. Ogden, Esquire, counselor at law, Allen Fitch, M. D., and George Sherman, all of the Borough of Manhattan, in the City of New York and County of New York, to enquire by a jury of the said County, among other things, whether the said John Armstrong Chanler was an incompetent person and incapable of managing his person and estate, and as to the value of the real and personal estate owned by the said John Armstrong Chanler, and also the property belonging
26 to him which had been conveyed during his alleged incompetency, and to whom and its value and the consideration paid therefor, and directing that the Sheriff of the County of New York be instructed in said commission to summon a jury in the man-

ner required by law, and directing that said commission be executed in the Borough of Manhattan, in the City and County of New York, and that previous notice of the time and place of such execution be given to the said John Armstrong Chanler and to Dr. Samuel B. Lyon, the person having the charge and care of him, at least five days before the date thereof, and that, upon the execution of the said commission, the said Dr. Samuel B. Lyon produce the said John Armstrong Chanler before the said Commissioners and jury to be inspected and examined by them whenever the said Commissioners should so demand, and that the said Commissioners might, in their discretion, dispense with the attendance of the said John Armstrong Chanler before them and a jury, unless the jurors, some or one of them, should require his attendance before the jury, and directing that said commission issue in conformity with said order; that thereafter a commission was duly issued out of and under the seal of said Court in the form prescribed by law and directed by said order and addressed to the persons named in said order; that due notice in writing that said commission had been issued, and that the same would be executed at the County Court House in the Borough of Manhattan and City of New York on the twelfth day of June, 1899, at four o'clock in the afternoon of that day, signed by said Commissioners, was duly served on the sixth day of June, 1899, upon the said John Armstrong Chanler at the Bloomingdale Asylum in the Village of White Plains, in the County of Westchester,
27 in the State of New York, in the manner prescribed by the laws of said State, by delivering to and leaving with the said John Armstrong Chanler, in person, a true copy of said notice, and at the same time and place, delivering to and leaving with the said Dr. Samuel B. Lyon, the Superintendent of the Bloomingdale Insane Asylum, in whose charge the said John Armstrong Chanler then was, in person, a copy of the said notice; that at the time and place specified in said last mentioned notice the said Commissioners by a lawful jury of said County duly enquired into the matters and things which by said order and commission they were directed to enquire into, and examined the witnesses and evidence produced before them, and in all respects duly executed said commission in the manner prescribed by the laws of said State and by said order and commission; that the said inquisition was duly signed by the jurors more than twelve, that is to say, fifteen, in number concurring therein and by all of the said Commissioners and annexed to said commission and the said commission and inquisition were returned by said Commissioners and filed with the Clerk of the County of New York on the fifteenth day of June, 1899; that in and by the said inquisition the said Commissioners and jurors duly found, among other things, that, at the time of the taking of such inquisition, the said John Armstrong Chanler was a lunatic, and was of unsound mind, and did not enjoy lucid intervals, so that he was incapable of managing his person and property, and that he had been in the same state of lunacy since the tenth day of March, 1897; that the said John Armstrong Chanler was then confined in the

Bloomingdale Asylum at White Plains, in the State of New York, and that he had been committed here on the tenth day of March, 1897, under proceedings taken in ac-
iance with the laws of the State of New York; and the defendant
ther alleges that thereafter and on the twenty-third day of June,
9, application was duly made to said Court at a Special Term
reof held at the County Court House in the County of New York,
the State of New York, for a decretal order confirming the said
uisition and appointing Prescott Hall Butler committee of the
son and estate of the said John Armstrong Chanler; that due
ice in writing of such application was served upon the said John
mstrong Chanler on the fifteenth day of June, 1899, by delivering
nd leaving with the said John Armstrong Chanler in person, at the
omingdale Asylum in the Village of White Plains, in the County
Westchester, in the State of New York, a copy of said notice and
the petition of the said Winthrop Chanler and Lewis S. Chanler,
ly verified on the fourteenth day of June 1899, upon which said
plication was based, and at the same time delivering to and leav-
g with Dr. Samuel B. Lyon, the person in charge of said Bloom-
gdale Asylum, in person, a copy of said notice and petition; that
the said twenty-third day of June, 1899, the said Court at the
d Special Term thereof, duly made an order bearing date on that
y, ratifying and confirming the findings of the said Commissioners
d jurors upon the execution of said commission, as set forth in
d inquisition, and adjudging as found by said Commissioners and
rors that on the twelfth day of June, 1899 the time of the taking
of said inquisition, the said John Armstrong Chanler was
a lunatic, and was a person of unsound mind, and did not
enjoy lucid intervals, and was incapable of managing his
rson and property, and that he had been in the same state of
nacy since the tenth day of March, 1897, at which time he had
en committed to the Bloomingdale Asylum in the State of New
ork under proceedings taken in accordance with the laws of the
ate of New York for the commitment to asylums of insane per-
ns, and appointing Prescott Hall Butler committee of the person
d property of the said John Armstrong Chanler, and directing
at before he enter upon the discharge of his duties as such com-
ittee he execute with sureties the bond prescribed by said order
d cause the same to be approved by one of the Justices of said
urt and filed in the office of the Clerk of the County of New York;
at said order was duly entered and recorded in the office of the
erk of the County of New York, in the State of New York, on the
id twenty-third day of June, 1899; that on the twenty-seventh
y of June, 1899, the said Prescott Hall Butler duly filed the bond
escribed by said last mentioned order duly executed and approved
one of the Justices of said Court and entered upon his duties as
ch committee, and that he continued to be and to act as the duly
pointed committee of the person and property of the said John
rmstrong Chanler until the acceptance by said Court of his resigna-
on as such committee as hereinafter stated; that on the nineteenth

day of November, 1901, the said Prescott Hall Butler presented to said Court his petition entitled "In the matter of John Armstrong Chanler an incompetent person," duly verified by him on the fifteenth day of November, 1901, whereby he resigned his office
30 and duties as committee as aforesaid and prayed that such resignation be accepted, and that Thomas T. Sherman, the defendant herein, be appointed committee of the person and property of the said John Armstrong Chanler in the place and stead of the said Prescott Hall Butler, which request that the said Thomas T. Sherman be appointed as such committee was made at the special instance and request of the heirs at law and next of kin of the said John Armstrong Chanler, and thereafter and on the said nineteenth day of November, 1901, by an order of said Supreme Court made at a Special Term thereof held in and for the County of New York, bearing date and duly filed and entered in the office of the Clerk of the said County of New York on that day, such resignation of the said Prescott Hall Butler as committee of the person and property of the said John Armstrong Chanler was accepted and Thomas T. Sherman, this defendant, was appointed the committee of the person and property of the said John Armstrong Chanler, all of which will more fully and at large appear from such proceedings of the records thereof, to each and all of which the defendant begs leave to refer upon the trial of this action as if the same were herein set forth at large; that the said Supreme Court of the State of New York was at all the times hereinbefore mentioned, and now is, a Superior Court of record having general jurisdiction in law and equity, and having jurisdiction of the subject matters of each of the proceedings hereinbefore in this paragraph of this answer mentioned and referred to, and duly acquired, in each of said proceedings, jurisdiction of the person of the said John Armstrong Chan-
31 ler, the plaintiff herein, and had jurisdiction and power to do the several acts and things and to make the several orders, decrees or judgments done and made by it in said proceedings; that none of said orders, decrees, or judgments has ever been appealed from, modified, annulled or set aside, and each of them at all times since the same was made, has been, and now is, of full force and effect; that the defendant as committee of the person and property of the plaintiff appointed by the said Supreme Court, is an officer of the said Court subject to the control and order of said Court, and that any and all acts of the defendant in respect to the person or property of the plaintiff have been as such committee.

Thirteenth. And for a fourth and further and separate defense to the plaintiff's alleged cause of action the defendant repeating the allegations contained in Paragraph Twelfth of this answer as if the same were herein set forth at large, alleges that by said orders, decrees or judgments of said Supreme Court of the State of New York, dated respectively the tenth day of March, 1897, and the twenty-third day of June, 1899, the plaintiff herein was duly adjudged to be a person incompetent to manage himself or his affairs, in consequence of lunacy, and that by said order of said Court dated the nineteenth day of November, 1901, this defendant was duly

appointed the committee of the person and property of the plaintiff, none of which orders, decrees or judgments has ever been appealed from, modified, superseded, annulled or set aside, and each of which, ever since the same was made, has been, and now is, of full force and effect, and that by reason thereof the plaintiff is in-
32 competent to institute or prosecute this action.

Fourteenth. And for a fifth and further and separate defense to the plaintiff's alleged cause of action the defendant, repeating the allegations and things contained in Paragraph Twelfth of this answer as if the same were herein set forth at large, alleges, upon information and belief, that the alleged petition mentioned and referred to in Paragraph III of said complaint was made in the name of, and was signed by, one C. Ruffin Randolph, but was not sworn to or otherwise verified; that said alleged petition was not presented to the County Court of Albemarle County, in the State of Virginia, as required by the statutes of said State in such case made and provided, but was addressed and presented to Hon. John M. White, a Judge of said Court; that said alleged petition was not presented and the proceeding thereby instituted was not instituted or conducted or prosecuted, by the said C. Ruffin Randolph in good faith, for the purpose in that behalf authorized by the laws of the State of Virginia, namely, to procure an adjudication that the said plaintiff was insane, and by reason thereof incapable of managing himself or his property and to procure the appointment of a committee of his person, but was instituted, conducted and prosecuted in collusion with the plaintiff herein or with some other person or persons acting on his behalf or in his interest for the purpose of procuring an adjudication that the said plaintiff was sane and capable of managing himself and his property, and for the purpose of making a record to be used in litigation then pending, or which the said plaintiff or some person or per-
33 sons in his interest then contemplated in respect of his property; that the said proceeding was in fact ex parte, and the testimony and evidence produced therein was biased, and the greater part thereof wholly incompetent; that no process or notice of said proceeding, or of any stage thereof, was ever issued or served, and no such process or notice was ever served upon the said plaintiff, or upon Prescott Hall Butler (who was then a citizen of the State of New York, and a resident of the City and County of New York, in said State of New York, and who was not then in the said State of Virginia), and who was from the twenty-third day of June, 1899, until the nineteenth day of November, 1901, the duly appointed and qualified and acting committee of the person and estate of the said plaintiff, either individually or as such committee, or upon this defendant (who was then a citizen of the State of New York, and a resident of the Town of Rye, in the County of Westchester in said State of New York, and who was not then in the said State of Virginia), either individually, or as committee of the person and prpoerty of the said plaintiff or upon any of the heirs at law or next of kin of the plaintiff, and that no heir at law or next of kin

of plaintiff, and neither the said Prescott Hall Butler, nor this defendant ever appeared in said proceeding, either individually, or as committee as aforesaid, in person, or by attorney or counsel; that the plaintiff herein, pursuant to such collusion, agreement or understanding with the said C. Ruffin Randolph, voluntarily presented himself before said Judge of said County Court upon the hearing in said proceeding, but that such appearance was of no effect, and did not give to said Judge, or to said County
34 Court, jurisdiction to entertain said alleged petition, or to make said alleged order or judgment, inasmuch as the said plaintiff had prior thereto by said orders or judgments of the Supreme Court of the State of New York bearing date respectively the tenth day of March, 1897, and the twenty-third day of June, 1899, been duly adjudged to be a lunatic and a person of unsound mind and incapable by reason thereof of managing his person or property, and the said Prescott Hall Butler had, by said last mentioned order or judgment, been duly appointed committee of the person and property of the said plaintiff, which orders or judgments of the said Supreme Court of the State of New York were, at the time of the presentation of said alleged petition to said Judge of said County Court of Albemarle County, and of the making of said alleged order or judgment, by him, and now are, of full force and effect, and which appointment of the said Prescott Hall Butler as committee as aforesaid was, at the time of the presentation of said alleged petition to said Judge of said County Court of Albemarle County, and of the making of said alleged order or judgment by him, in full force and effect, and, inasmuch as the said plaintiff was, in fact, at the time of his voluntary appearance in said proceeding in said County Court in said Albemarle County, a lunatic and a person of unsound mind and incapable of voluntarily appearing upon the hearing in said proceeding, or of doing any act or thing to confer upon said Judge or upon said County Court of Albermarle County jurisdiction of his person, or of the subject matters of said proceeding, and that neither said Judge nor
35 said County Court ever acquired jurisdiction in said proceedings of the person of the plaintiff herein, or of the said Prescott Hall Butler, individually, or as committee of the person or property of the plaintiff herein, or of this defendant, either individually, or as committee of the person or property of the plaintiff herein, or of any heir at law or next of kin of the plaintiff, or of the property of said plaintiff in the hands of the said Prescott Hall Butler as such committee, or in the hands of this defendant as such committee, or of the subject matters of said proceedings, or power or authority to make said alleged order or judgment, and that the said alleged order or judgment was at the time of the making thereof, and now is, wholly void and of no force and effect and should be so adjudged by the judgment to be entered herein; and that if said order be valid for any purpose (which this defendant, upon information and belief, denies), it is voidable for the reasons aforesaid and should, by the judgment to be entered herein,

be wholly vacated and set aside; and if said order be valid for any purpose (which this defendant, upon information and belief, denies), it has no force or effect whatever outside of the State of Virginia, and did not and does not operate to modify, annul, set aside, or supersede the said orders or judgments of the Supreme Court of the State of New York, dated respectively, the tenth day of March, 1897, the twenty-third day of June, 1899, and the nineteenth day of November, 1901, or to modify, restrict or limit the power and authority conferred or intended to be conferred by said orders or judgments upon the said Prescott Hall Butler or this defendant, and was and is of no binding force or effect whatever upon any heir at law or next of kin of the plaintiff, or upon the said Prescott Hall Butler, individually, or as committee of the person and property of the said plaintiff, or upon this defendant, individually, or as committee of the person and property of said plaintiff, or upon the property of the plaintiff in the hands of either of them as such committee and should be so adjudged by the judgment to be entered herein.

36

Fifteenth. And for a sixth and further and separate defense to the plaintiff's said alleged cause of action the defendant alleges, upon information and belief, that the plaintiff, at all of the times mentioned and referred to in said complaint, was, and now is, a lunatic and a person of unsound mind, and that by reason thereof he is incompetent to manage himself or his affairs, or to employ counsel, or to institute or prosecute this action.

Sixteenth. And for a seventh and further and separate defense to the plaintiff's said alleged cause of action the defendant, repeating the allegations and things contained in Paragraph Twelve of this answer as if the same were herein set forth at large, alleges that the property of the plaintiff situated in the State of New York is in the exclusive custody and control of the Supreme Court of the State of New York, and that the defendant is the duly appointed committee of the person and property of the plaintiff, and as such is an officer of said Court, and that said Court has exclusive jurisdiction of all matters and actions in respect of such property, and has exclusive jurisdiction of the subject matters of this action, and of all of the issues therein, and that this Court has no jurisdiction of this action, or of any of the subject matters thereof.

37

Seventeenth. And for an eighth and further and separate defense to the plaintiff's said alleged cause of action, the defendant, repeating the several allegations and things contained in Paragraph Twelve of this answer as if the same were herein set forth at large, alleges that the plaintiff is, and at all the times mentioned in said complaint was, a duly adjudged lunatic, and a person incompetent to manage himself or his property in consequence of such lunacy, and that ever since the nineteenth day of November, 1901, the defendant has been, and now is, the duly appointed, qualified and acting committee of the person and property of said plaintiff; that, acting under and pursuant to, and in reliance upon, the said orders or judgments of the Supreme Court of the State of New York dated respectively the tenth day of March, 1897, the twenty-third day of

June, 1899, and the nineteenth day of November, 1901, and in execution of the duties and trusts thereby imposed upon him, he has in good faith collected and received the several items of property and money belonging to the plaintiff, which are in that behalf mentioned and referred to in his inventory and account and referred to in Paragraph V of said complaint and hereinafter in this paragraph of this answer referred to, and has paid out of the moneys in his hands certain expenses of administration of said trust and certain sums for the support and maintenance of the plaintiff in that behalf mentioned and referred to in said inventory and account and that on the first day of December, 1903, he had in his hands as such committee the several items of property and money belonging to
38 said plaintiff, which are in that behalf mentioned and referred to in said inventory and account, and that since the said first day of December, 1903, he as such committee, has received certain additional sums of money belonging to the plaintiff, and has paid out — the moneys in his hands certain expenses of administration of the trust reposed in him as such committee and certain sums for the support and maintenance of the plaintiff, and that he now has in his hands as such committee the residue of such property; that, pursuant to the directions in that behalf contained in an order duly made by the Presiding Justice of the Appellate Division of the Supreme Court of the State of New York, First Department, which department includes, and is co-extensive with, the said County of New York, on the tenth day of February, 1903, and entered on the same day in the office of the Clerk of said Appellate Division, this defendant as committee as aforesaid was required to, and did, present to Rollin M. Morgan, Esq., the Referee, duly appointed by said order to examine the accounts and inventories filed or required to be filed in the office of the Clerk of the County of New York by the committees of the property of lunatics, idiots and habitual drunkards during the months of January, 1898, 1899, 1900, 1901, 1902 and 1903, in accordance with Section 2341 of the Code of Civil Procedure of the State of New York, which had not been previously examined or judicially settled prior to the first day of February, 1903, his inventory and account from the date of his appointment as such committee to the first day of December, 1903, and that such proceedings were duly had by and before such Referee that, on or about the thirtieth day of January, 1904, the said Referee
39 duly made and filed his report in the office of the Clerk of said Appellate Division whereby he found and reported among other things, that, after examining the assets of the estate of the plaintiff the items of income collected and vouchers submitted to him for the disbursements set forth in said account and this defendant, under oath, the assets were as set forth in said account and in said report; that the income had been properly collected by this defendant, as such committee; that there were either vouchers for all of the payments stated to have been made by the said committee, or, in case vouchers were missing, their absence had been sufficiently explained and the testimony annexed to said report established such payments and the propriety thereof; that all of the

payments made as charged in said account were proper payments, and that said account was correct and should be approved; that thereafter and on the tenth day of February, 1904, an order was duly made by said Presiding Justice and entered in the office of the Clerk of said Appellate Division in all respects confirming said report of said Referee, which order has never been appealed from, modified, superseded, vacated or set aside, and is now in full force and effect, as by reference to said several orders, account and inventory and Referee's report will more fully and at large appear, and to which this defendant begs leave to refer upon the trial of this action as if the same were herein set forth at large; that the defendant upon his appointment as such Committee duly filed in the office of the Clerk of the County of New York, his bond as such committee in the sum of fifty thousand dollars with the Lawyers' Surety Company of New York as surety; that he has not converted any of the plaintiff's property or money to his own use or benefit, but has at all times held and safely kept, and now holds and safely keeps, the same as committee as aforesaid, upon the — subject to the duties and trusts by the laws of the State of New York imposed upon him as such committee; and has at all times been, and now is, ready and willing to account therefor when thereunto duly required by a Court of competent jurisdiction.

Wherefore, the defendant demands judgment dismissing the complaint with costs.

EVARTS, TRACY & SHERMAN,
Attorneys for Defendant.

STATE OF NEW YORK,
Southern District of New York,
County of New York, ss:

Thomas T. Sherman, being duly sworn, deposes and says: That he is the defendant in the foregoing answer named; that he has read said answer and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

THOS. T. SHERMAN.

Sworn to before me this 29th day of November, 1904.
[L. S.]
CHARLES S. BUTLER,
Notary Public, No. 281, New York County.

41 *Order Amending Title as to Change of Plaintiff's Name.*

At a Stated Term of the Circuit Court of the United States for the Southern District of New York, Held at the Court-rooms thereof in the Post Office Building, in the Borough of Manhattan, City, County, and State of New York, on the 18th Day of October, 1909.

Present: Hon. E. H. Lacombe, U. S. Circuit Judge.

JOHN ARMSTRONG CHANLER, Plaintiff,
against
THOMAS T. SHERMAN, Defendant.

Upon reading and filing the annexed stipulation and consent of the attorneys for the respective parties hereto, it is now on motion of William D. Reed, attorney for plaintiff,

Ordered that in all future proceedings in the above entitled case the name John Armstrong Chanler shall read John Armstrong Chaloner wherever the same may appear therein, and it is

Further ordered that the Clerk of this Court note the foregoing amendment to the title of this case upon the docket of this Court.

E. H. LACOMBE,
United States Circuit Judge.

42 United States Circuit Court for the Southern District of New York.

JOHN ARMSTRONG CHANLER, Plaintiff,
against
THOMAS T. SHERMAN, Defendant.

At the request of the attorney for the plaintiff herein and upon his statement that the plaintiff has expressed a desire hereafter to be known as John Armstrong Chaloner instead of John Armstrong Chanler as heretofore, it is now without prejudice to any of the rights of the parties hereto

Stipulated and agreed between the attorneys for the respective parties hereto that in future proceedings in the above entitled case the name of John Armstrong Chanler shall read John Armstrong Chaloner wherever the same may appear therein, and it is

Further consented that an order to that effect may be entered herein without costs and without further notice.

Dated, New York, August 4, 1909.

WILLIAM D. REED,
Attorney for Plaintiff.
EVARTS, CHOATE & SHERMAN,
Attorneys for Defendant.

43 *Bill of Exceptions and Exhibits.*

United States District Court, Southern District of New York.

JOHN ARMSTRONG CHALONER, Plaintiff,
against
THOMAS T. SHERMAN, Defendant.

Be it remembered that on the 19th, 20th, 21st and 23rd days of February, 1912, the above-entitled cause came on for trial before the above Court and a jury duly empanelled.

Hon. George C. Holt, Presiding.

The plaintiff appearing by William D. Reed, his attorney, and Hugh Gordon Miller, Frederick A. Ware and W. Gilmer Dunn, of counsel; the defendant appearing by Evarts, Choate & Sherman, his attorneys, and Joseph H. Choate, Jr., and John G. Milburn, of counsel, the following proceedings were had:

The usual opening speech in behalf of the plaintiff was made by Mr. Ware, of plaintiff's counsel.

Demand made by the plaintiff through his counsel on the defendant for the property which is the subject matter of the suit, said demand being dated April 4, 1904, prior to the bringing of the action, received in evidence and marked Plaintiff's Exhibit 1, and read to the jury by Mr. Miller.

(Printed at page 125.)

44 Mr. Miller: Will it be admitted that there was no delivery under that letter?

Mr. Choate: It is admitted.

HENRY C. SIMONS, called as a witness in behalf of the plaintiff, being duly sworn, testified as follows:

Direct examination by Mr. Miller:

My name is Henry C. Simons. I am clerk and custodian of the records of the Department of Taxes and Assessments, main office. I have been summoned by a subpœna duces tecum to produce records from our office at this trial. I have produced that record. This document is dated 1896. The date that the assessed made the affidavit appears on the paper.

By the Court:

Q. What do you call that?

A. Personal affidavit of Mr. Chanler. It refers to the taxes of 1896.

Received in evidence and marked Plaintiff's Exhibit 2, and read to the jury by the witness as follows:

"Hours for correction of assessment, 10 A. M. to — P. M., except Saturdays, and then 10 A. M. to 12 M.

"The department is not required by law to send this notice. It

is sent for the information and benefit only of the party assessed. Please bring this notice with you."

45 Then book line 2192, page 122:

"John A. Chanler, 120 Broadway. Department of Taxes and Assessments, Stewart Building. New York, January 13, 1896. You are hereby notified that your personal estate for 1896 is assessed at $10,000, exclusive of bank stock, and that the same is erroneous must be corrected before the Commissioners on or before the 30th day of April next or it will be confirmed at that amount, from which there will be no appeal. By order of the Commissioner of Taxes and Assessments. C. Rockland Tyng, Secretary."

On April 28 he appeared before the Board and they put this rubber stamp on. The rubber stamp reads: "I hereby swear that on the second Monday of January last the value of my personal property, exclusive of bank shares, subject to taxation, did not exceed $0." Then in his own handwriting, or in some penmanship, I can't say whose handwriting, this appears to the side:

"Chanler, Maxwell & Phillip, lawyers."

Then the Commissioners' signatures appear: "T. S." standing for Theodore Sutro, and "W" standing for Wells.

Then below that is this in writing: "I practice law here, but devote my time in an enterprise in North Carolina. I have no intention of resuming my residence here. I claim that I am not taxable here, but nevertheless consent to an assessment of $2,500. My residence is Cobham, Virginia." Signed to the right, "John Armstrong Chanler," and to the left, the initial of the Commissioner that swore him, "T. S.," standing for Theodore Sutro.

I have examined the books to see if Mr. Chanler was assessed for anything in 1895. He was not.

46 Subject to correction, it is conceded that the signature to Plaintiff's Exhibit No. 2 is that of Mr. Chanler, the plaintiff.

Deposition of Princess AMELIE RIVES TROUBETZKOY, taken before H. W. Wood, a Notary Public, in and for the County of Albemarle, Virginia, at the home of the said Amelie Rives Troubetzkoy, at Castle Hill, Cobham, Albemarle County, Virginia, on the 2nd day of April, 1906, commencing at 11 o'clock in the forenoon thereof, in pursuance to an annexed notice, marked Exhibit A, for use at the trial on behalf of the plaintiff, read on behalf of the plaintiff as follows:

My name is Amelie Rives Troubetzkoy. My home is Castle Hill, Virginia. I know the plaintiff John Armstrong Chanler. I have known him since 1887. I married him in 1888. I was married to him until the divorce in 1895. Mr. Windsor obtained the divorce.

"Q. Where was it obtained?"

Mr. Milburn: We may as well have an objection to this deposition, Your Honor, that will govern as to the extent to which it can be read, and that is that so far as the deposition relates to what

happened in connection with the proceedings resulting in the appointment of the committee, it is perfectly material, but that everything about this deposition that has no relation to those proceedings, that shows Mr. Chanler's condition in previous years, his marriage and his divorce, or his condition after that time, is all absolutely immaterial on what the Court has ruled here, or rather I will not say ruled, but intimated, that the primary issue
47 here is what were the conditions at the time this committee was appointed, what was then done, what notice was there.

The Court: I shall agree with that general position. I can only rule on specific questions.

Mr. Milburn: All about this marriage and divorce, I object to that.

Mr. Miller: It merely shows the relationship of the witness to the party who is in issue here. It is simply leading up. It is always necessary to start somewheres with a witness.

Mr. Milburn: I object to the last question, which was, "Where was it obtained"—referring to the divorce.

The Court: I will sustain that objection.

Mr. Miller: Exception.

I have not seen Mr. John Armstrong Chanler since I was divorced from him. I have seen him at a distance, twice. I have not spoken to him.

"Q. Have you since married again?"

Objection to; objection sustained; exception to plaintiff.

"Q. What was the condition of the plaintiff's health during his marriage to you?"

Objected to as immaterial; objection sustained; exception to plaintiff.

Mr. Miller: That went to the things, the fraudulent and perjurous things alleged against him. One of them was that his physical condition was something that we will prove here was not true, and that it was perjury and a fraud on the Court, and that is in issue here. It goes to the rottenness of that commitment in 1897.

48 The Court: The matter of the commitment, in my opinion, has nothing to do with the case here. Mr. Sherman had nothing to do with that commitment. If Mr. Chaloner was wrongfully treated in the matter of that commitment, it was by the people who caused it to be done.

Mr. Miller: But the whole proceeding of 1899 and everything else starts there. If that falls, all falls. That is the foundation stone of the whole business, and if the foundation stone is rotten the whole temple falls. He would never have been in Bloomingdale at all but for that, and we expect to prove that that was rotten in every respect, in every conceivable manner, and we expect to show how it was rotten. This is the foundation stone, and this whole lunacy commitment of 1899, the whole proceeding is recited as part of that record.

The Court: A man may be taken to a lunatic asylum on a certificate of physicians, and that proceeding may be entirely irregular and illegal, and while he is there, there may be proceedings instituted for an inquisition as to his lunacy, which may result in the adjudication that he is a lunatic, and in that case it is entirely valid, and has nothing to do with his previous condition.

Mr. Miller: But he was put there on an indeterminate commitment, and he stayed there nearly four years. It was without any appearance by him, he was put in Bloomingdale by an ex parte proceeding in New York, and that was as rotten as the first.

The Court: When you come to the proceeding on the inquisition you may show all the facts about his situation. The fact of his being sent there before any proceedings were taken on the
49 inquisition is something for which Mr. Sherman has no responsibility, and it has nothing to do with this case.

Mr. Miller: Except that he got his title there, if he had any title.

The Court: He did not get any title through the commitment of the insane man, but he got his title through the order of the court which took possession of the property.

Mr. Miller: But we contend that these people perpetrated an infamous fraud on the Court, and we want to prove it.

"Q. Please state what, if any, sickness he had during that period?"

Objected to; objection sustained; exception to plaintiff.

"Q. What was the condition of his health generally?"

Objected to; objection sustained; exception to plaintiff.

"Q. Was he athletic?"

Objected to; objection sustained; exception to plaintiff.

"Q. After his marriage where did he spend his time?"

Objected to; objection sustained.

Mr. Miller: I except, your Honor, and will not read any more questions bearing on that subject. I will skip them as far as I can, and get to something else, but I will except, of course, take a general exception.

50 "Q. I now offer in evidence, marked 'Exhibit P,' a printed copy of the 1897 lunacy proceedings, and ask that same be filed with these depositions. In these proceedings, under the statement of facts alleged against the plaintiff, were the following: 1st. That 'Mr. J. A. Chanler has for several months while at his home in Virginia been acting in a very erratic manner'—this refers to his conduct presumably for the several months preceding the trial in New York in 1897?"

Mr. Miller: We offer in evidence Exhibit P, a certified copy of these proceedings.

Mr. Milburn: We object to them as immaterial.

The Court: These are the proceedings on Dr. Starr's certificate, the original commitment?

Mr. Miller: Yes, sir.

The Court: I sustain the objection.

Mr. Miller: Exception.

(Contained in Plaintiff's Exhibit 3 and later admitted as a part thereof, and printed at page 203.)

"Q. In these proceedings, under the statement of facts alleged against the plaintiff, were the following: 1st. That 'Mr. J. A. Chanler has for several months while at his home in Virginia been acting in a very erratic manner'—this refers to his conduct presumably for the several months preceding the trial in New York in 1897? Please state whether or not you have any information concerning this allegation?"

Objected to; objection sustained; exception to plaintiff.

At that time I was at "Castle Hill." "Castle Hill" is about three or four miles from Mr. Chanler's home, the "Merry Mills."

51 "Q. It is then alleged in this petition in these proceedings that he has limited himself to a peculiar diet—during the period that you knew him and were married to him, please state what, if anything, was peculiar about his diet?"

Objected to; objection sustained; exception to plaintiff.

"Q. During that period the chief or only peculiarity about his diet was the fact that he was a vegetarian?"

Objected to; objection sustained; exception to plaintiff.

"Q. It is next alleged that 'he has devised many peculiar projects, such as a roulette scheme to beat Monte Carlo;' please state what, if anything, you know about this allegation?"

Objected to; objection sustained; exception to plaintiff.

"Q. It is then alleged that 'he gives as a reason for these and other acts that he is inspired by a spirit which directs him,' what do you know of this allegation?"

Objected to; objection sustained; exception to plaintiff.

"Q. Have you any reason for saying that you can't think of him as having said that?"

Objected to; objection sustained; exception to plaintiff.

"Q. It is next alleged that 'for the past three weeks in New York he has constantly talked of this delusion; he has neglected
52 his health; has injured his person; has been at times wildly excited.'"

Objected to; objection sustained; exception to plaintiff.

"Q. Then in the certificate of the Judge, commencing at line 187 of the proceedings, it is said that 'The patient is in such a state

of excitement and is so easily made dangerous to himself and to others by any criticism of or opposition to his delusion that a personal service would be attended by great danger;' do you know anything about that allegation?"

Objected to; objection sustained; exception to plaintiff.

"Q. During the period that you knew Mr. Chanler, what were his opinions on the subject of spiritualism?"

Objected to; objection sustained; exception to plaintiff.

"Q. Did he ever do anything to suggest to you that he had delusions?"

Objected to; objection sustained; exception to plaintiff.

"Q. Will you please state what was his general temperament—excitable or otherwise?"

Objected to; objection sustained; exception to plaintiff.

"Q. Is he any more excitable or high strung than the others?"

Objected to; objection sustained; exception to plaintiff.

53 "Q. In the certificate, commencing at line 205, it is stated that there was one previous attack, presumably referring to lunacy; do you know anything about this charge?"

Objected to; objection sustained; exception to plaintiff.

Mr. Miller: In that connection I want to show that she was with him at that time and knows all the facts and circumstances, and that that is a false statement in the papers that committed him.

The Court: I am willing to take your statement for it, but it has nothing to do with the case whatever, in my opinion.

Mr. Miller: I except. That same statement was made in the proceeding of 1899, and surely if Mr. Sherman has any title of any kind, or color of title, he must get it from the 1899 alleged Sheriff's jury proceeding, and that same allegation was made there, that he had been confined in a lunatic asylum in France, and I will show that that is absolutely false.

The Court: I will pass upon that question when we come to it.

Mr. Miller: We have already come to it in this deposition.

The Court: I sustain the objection.

Mr. Miller: I except.

"Q. During that period was there or not anything to suggest a contrary opinion?"

Objected to; objection sustained; exception to plaintiff.

"Q. It is alleged that the present attack, referring to the
54 attack with which he is charged in New York, began in November, 1896?"

Objected to; objection sustained; exception to plaintiff.

"Q. Have you ever heard any rumors that affected his sanity?"

Objected to; objection sustained; exception to plaintiff.

"Q. It is next alleged that he was confined at Neuilly, near Paris, France, some years ago for a short time, please state whether or not this is true?"

Objected to; objection sustained; exception to plaintiff.

"Q. Will you explain what, if anything, could have been a basis for this charge?"

Objected to; objection sustained; exception to plaintiff.

"Q. Then you state that he was only at Neuilly once, and that time to see a friend?"

Objected to; objection sustained; exception to plaintiff.

"Q. What did you mean by saying 'he was extremely quiet that Spring,' in your above answer?"

Objected to; objection sustained; exception to plaintiff.

"Q. Then did you or not refer to his excitability in that answer?"

55 Objected to; objection sustained; exception to plaintiff.

"Q. Was he, or not, a very energetic man?"

Objected to; objection sustained; exception to plaintiff.

"Q. In this certificate of lunacy they state that he was excited, is armed, threatens people, is dangerous; during the period that you knew him did he or not ever do anything to indicate that he was dangerous?"

Objected to; objection sustained; exception to plaintiff.

1899 lunacy proceedings before the Sheriff's jury, the same being the proceeding in which the predecessor of Mr. Sherman was appointed, received in evidence and marked Plaintiff's Exhibit 3, and portions thereof read to the jury.

(Printed at page 126.)

Mr. Milburn: The paper which is designated the oath shows that it was sworn to by Mr. Allen Fitch and Mr. George Sherman on the 5th day of June, 1899, and is marked "Filed June 12, 1899."

Mr. Miller: I want to read it in the record, if the learned gentlemen will just allow me to have a minute (reading):

"New York Supreme Court, New York County. In the Matter of John Armstrong Chaloner. State of New York, County of New York, ss: David B. Ogden, Allen Fitch, George Sherman, herein appointed by writ, dated the 23rd day of May, 1899, being each duly sworn for himself says: That he will faithfully, honestly and impartially discharge the trust committed to him as Commis-
56 sioner in the above entitled matter. (Signed) David B. Ogden, Allen Fitch, George Sherman. *Signed* and subscribed to before me this the fifth day of June, 1899. William

White Whitaker, Notary Public, New York City. Certificate filed in New York County.

"New York Supreme Court, New York County. In the Matter of John Armstrong Chaloner, an alleged incompetent person. Oath of Commissioners. Jay & Candler, Attorneys for Petitioner, Office and Post Office Address, 48 Wall Street, New York City, New York. Filed June 12, 1899."

Mr. Milburn: I also produce the original precept issued by the Commissioners to the Sheriff to summon a jury; which is taken the 31st day of May, 1899, and is endorsed as received at the Sheriff's office, June 7, 2:36 P. M., 1899.

Mr. Miller continues the reading of Exhibit 3 to the jury, concluding with the words, "The case was then submitted to the jury."

PEDRO N. PIEDRA, being duly sworn as a witness on behalf of the plaintiff, testified as follows:

Direct examination by Mr. Miller:

My name is Pedro N. Piedra. I am a trained nurse. I have made a specialty in that line of mental and nervous cases. I have — a specialty of that character of cases since I left Bellevue Hospital, my first case was in 1899. For fifteen or sixteen years I have been a trained nurse in mental and nervous diseases. I was at Bellevue Hospital first. I have had other experience. Sometimes I have had a surgical case, or medical work like a typhoid
57 case or something like that, or paresis, or dementia, or paranoia like they claim here that he has, or something like that. I remained in Bellevue in that class of work for two years. We had what is called an insane pavilion, an alcoholic pavilion. When I left there I got my first case with Dr. Janeway. I had been working with him since I left Bellevue until he died. From the time I left Bellevue I worked with Dr. Story, and Dr. Peterson, and Dr. Hunt, Dr. Pierce L. Clark, Dr. Dana, and Dr. Lambert. I was employed in such a capacity at Bloomingdale Asylum. I was employed at Bloomingdale Asylum by Dr. Lyon, whom I met in a case—It was in the year 1899. I was employed taking care of Mr. Chaloner. His name was John Armstrong Chaloner. I was daily with Mr. Chaloner all day long from eight to eight for two months' time. I conversed with him every day. I took charge of his case around the month of May or around the month of June, 1899.

Q. Was Mr. John Armstrong Chaloner at any time when you were there serving in that capacity with him an insane person?

Mr. Choate: Objected to on the same grounds.

The Court: Sustained.

Mr. Miller: Before your Honor rules, assuming you rule it out, or do intend to rule it out, which I don't think you will after you have heard us fully, I would like to be heard. This goes to the 1899 proceedings, and this is just about the time that those proceedings before the Sheriff's jury were going on, and this man was not produced or given an opportunity to be heard. I am going

to prove by the man who had him in charge then who is
58 qualified to say, that he was not insane, just at the very time they were holding these proceedings. It was over the person and estate of an absolutely sane man. That certainly your Honor will not rule out.

The Court: I certainly will. I sustain the objection.

Mr. Miller: I except.

The Court: There are thousands and millions of people who were not called as witnesses. That is no reason why their evidence should be taken now.

Mr. Miller: My object is, your Honor, that the 1899 proceedings were also steeped in fraud, and that the reason they did not bring him down was because they knew *he* could show him sane if they brought him there. Does your Honor mean to say if they were sitting there in that manner trying in absentia a perfectly sane man, that he must not be allowed to stand in any other court of the land?

The Court: I sustain the objection.

Q. Have you attended upon other insane men?

A. Yes, sir, I have.

Q. How many of them?

Objected to on the same ground; objection sustained; exception to plaintiff.

Q. What was his physical condition at that time?

Objected to; objection sustained.

Q. Did you have any conversation with the doctor in charge?

A. Yes, sir.

Q. About the condition of Mr. Chaloner?

A. Yes, sir, I had.

59 Objected to; objection sustained; exception to plaintiff.

Mr. Choate: I move to strike out the answer.

The Court: Yes.

Mr. Miller: I except.

Q. Did you have any conversation with John Armstrong Chaloner in May, 1899?

Objected to; objection sustained.

Q. Did you observe his actions?

Mr. Choate: Same objection.

The Court: Same ruling.

Mr. Miller: Exception. Will your Honor permit me to examine this witness at all about any physical or mental condition of Mr. Chaloner at this time in May, 1899?

The Court: No.

Mr. Miller: The purpose of it, as I say, being to show that these proceedings were fraudulent; that the man was perfectly sane, and that they knew it, and that the doctors stated so to him.

The Court: I sustain objections to any questions put to any witness on the question as to whether in their opinion he was sane or

insane. The Supreme Court has tried that question and rendered a judgment on it, and that is the end of it.

Mr. Miller: I hope your Honor will give me a chance to be heard on the law on that before you throw me out of Court.

The Court: I will.

Mr. Miller: It is a very serious matter, and it goes to the vitals of the case, and I hope you will state to the jury now that you don't mean that remark as biasing them, but that you will charge
60 them as to that in due time. Will you allow me to bring out the conditions under which Mr. Chaloner was living at that time?

The Court: No. I can't tell until you ask your question. It does seem to me it is not of materiality unless you propose to show that he wished to come down to the hearing and was prevented by physical force or something of that kind, or prevented by the parties who were interested, or who brought the proceedings. I suppose if the people who brought this petition captured the man and locked him up and kept him away from being represented at the trial that would be evidence.

Mr. Miller: That is just exactly what they had already done in 1897, and kept him there a long time.

The Court: The evidence already tends to show, so far as it has gone, that he was free to come down.

Q. Did you have any conversation with the doctor in charge over you there about Mr. Chaloner being heard or examined anywhere?

Objected to; objection sustained; exception to plaintiff.

Mr. Miller: I offer the Virginia record, which the Circuit Court of Appeals says cannot be ignored in this case.

Mr. Choate: Objected to as immaterial.

The Court: Sustain the objection.

(See Stipulation, page 301.)

Mr. Miller: I, of course, except to that, but your Honor will allow me to be heard a little further, I am sure. The Circuit
61 Court of Appeals calls attention to the fact that they set this up affirmatively in their answer. The Circuit Court of Appeals has said that this petitioner must be given full faith and credit, and that he cannot be ignored in this case, and the Circuit Court of Appeals respectfully suggests to these gentlemen that they eliminate this from their consideration and they were given sixty days in which to do it, to simplify these issues, in which event they said they would not issue that writ of protection but they sought to rely on their answer, as they had drawn it and they have put it in issue. It seems to *be* that under that decision of the Circuit Court of Appeals, which says it cannot be ignored, your Honor will allow me to introduce that record, which the Circuit Court of Appeals says cannot be ignored, and which the Constitution of the United States says must be given full weight and credit, I call your Honor's attention in that connection to the fact that this action was not brought until after that Virginia decree, and that Mr. Sherman's appointment was not made until after that Virginia decree.

The Court: In my opinion the issue, which you speak of as being raised, is your claim that that decree is a valid decree establishing Mr. Chaloner's sanity. The other side say in their answer that it is an invalid decree, that it was collusive and is to be disregarded. In my opinion it is entirely immaterial in this case whether it is valid or whether it is invalid, because its only validity, its only materiality is on the question whether Mr. Chaloner is sane or insane, and in my opinion the question of whether he is
62 sane or insane now, or has been at any time in the past is an abstract question, and entirely immaterial to this case. The question is whether this plaintiff is entitled to recover the money that he sues for from Mr. Sherman, on the ground that he has converted it, that you have made a demand upon him for it, and he has not given it, that he has no legal right to retain it; but if he has a legal right to retain it and holds it under an order of the Supreme Court appointing him its officer to retain it, no other Court can authorize a judgment which will take it away from him. The Supreme Court of New York State is the only Court that can supersede the inquisition and restore the money and property to Mr. Chaloner, which it is presumed it would do as a matter of justice if he is now sane and entitled to the money, but there is no other Court in my opinion that can do it unless the action of the Supreme Court in appointing Mr. Sherman was a nullity.

Mr. Miller: It was, and I expect to show it.

The Court: You have given no evidence bearing on that point. I sustain this objection to the record of the Virginia Court, with all respect to the Virginia Court.

Mr. Miller: Your Honor, I will offer the order—the Virginia decree of sanity, and leave out the rest of it. I have been offering the full record, and having had it ruled out, and excepted to, I offer the decree of that Court. What I am offering is an exemplified copy under the laws of Congress.

Mr. Choate: Same objection.

The Court: I sustain the objection.

(See Stipulation, page 301.)

Mr. Miller: I offer to read the evidence of John Arm-
63 strong Chaloner, the plaintiff in this case, as bearing upon the question of his residence, as affecting the jurisdiction in this case, and also as bearing upon his residence in regard to the jurisdiction in the New York case.

Deposition of JOHN ARMSTRONG CHALONER, a witness for the plaintiff, read on behalf of the plaintiff, as follows:

My name is John Armstrong Chaloner, born the 10th day of October, 1862. I am the plaintiff in this case. I have not always gone by the name of John Armstrong Chaloner. My name at the commencement of this action was John Armstrong Chanler—Chanler being the corrupted form of the name Chaloner. My residence at the commencement of this action in 1904, was 'The Merry Mills,' Cobham, Albemarle County, Va. I afterwards transferred my residence, with a voter's certificate to Roanoke Rapids, Halifax County, North Carolina—the town owned by the Roanoke Rapids

Power Company, of which I owned the largest stock, and spent about fourteen or fifteen months in building, and when built I left.

Letter addressed to Mr. John Armstrong Chanler, dated July 13, 1905, signed by H. G. Mahanes, Registrar, Lindsays Precinct, stating that said registrar had that day erased from his registration book the name of John Armstrong Chanler, and made the following entry under the heading 'If transferred, when and to what precinct,' 'Roanoke Rapids, N. C., July 13th, 1905,' received in evidence and marked "Plaintiff's Exhibit 4."

(Printed at page 297.)

64 Certificate that John Armstrong Chanler was a registered and qualified voter in Albemarle County, Va., in October, 1902, dated July 11th, 1905, and signed by Frederick K. Page, received in evidence and marked "Plaintiff's Exhibit 5."

(Printed at page 298.)

My occupation or profession was that of Law writer and publicist; I might add lawyer (I pre-suppose that when I say law writer), member of the New York Bar, law writer and publicist. After my marriage, I lived at the home of my father-in-law, Col. Rives, at "Castle Hill," from 1888 until I went to Europe shortly before January, 1889, for a short trip and there spent a few weeks with one of my artist friends in this house which I still leased in Paris. I then returned and continued my residence at my then father-in-law's home until the Spring of 1889, when the present Princess Troubetzkoy and myself sailed to Europe for a trip of a duration of some years. We intended to stay there for some years, to educate her marked talent for painting. I remember that it was about that time in the Spring before the Paris season closes, it closing before the London season. While at Paris, we stopped at the house of the Dutch minister from the Netherlands to France, whose wife was a cousin of mine. We then went to London and spent the season there. In 1891 we returned to this country, after spending two years in Europe, during which time my then wife had perfected herself in the art of painting. In 1891 I began to push, if I may use that phrase, an art scheme, which is known as "The Paris Prize Art Fund." "The Paris Prize," founded by me in the Winter

65 of 1890-'91, is an exact counterpart of the Prix de Rome (the Prize of Rome) founded by Napoleon Bonaparte.

I was engaged in business in New York City. My residence at that time was The Everett House, Union Square, New York. I was there two years, 1892 to 1893 to 1894. I gave up my residence in the Everett House in 1894. My business was, as I have said, the law firm of Chanler, Maxwell & Phillip, and I used to once in a while, or rather frequently, once in two weeks, run down to Virginia, for the present Princess Troubetzkoy did not live in New York, although New York was my residence, and I voted there, but only voted once (for Cleveland in 1892). I was on the late William C. Whitney's private committee for raising money for the campaign, located in one of the parlors reserved for the campaign in the Hoffman House.

After giving up my residence at the Everett House in New York, I went to Virginia. I went South, but first went to Washington. I was then looking for the best town in the South for water power, cotton plantations and competition in transportation, by that I mean transporation facilities and nearness to the North, and during the Summer—no let me correct m-self, that was in the Summer of 1893—it was from 1893 to 1894 that we were investigating what is well known as the Roanoke Rapids Power Company's site; investigating it as to whether we should take it or not. We finally concluded to take it and the option was signed in the Winter of 1893-'94, as I remember it. We then took possession. I had bought a house, "The Merry Mills," at Cobham, Virginia, in the early Spring of 1894, just about the time I gave up my residence in New
66 York, I was there from 1892 to 1894. In 1894 I went South, and spent most of the time at "Castle Hill," and then bought "The Merry Mills" in the Spring of 1894, and in the late Summer of 1894 went to Europe; I say late Summer, I was only there about six weeks, started about the first of July and got back in August, six weeks in all, on a business trip. Then in 1895—well, prior to that, the present Princess Troubetskoi and myself had agreed to disagree, and to that end and to keep up appearances, I was living partly at "Castle Hill;" but the decision for divorce was taken before that time, that is, the year 1894, and she took the first step by going to Los Angeles on Friday, February fifteenth, 1895 (I remember that on account of the alliteration of the name, the number of times the letter F occurs in the date). On the same day I went to Petersburg and spent the night with Capt. W. Gordon McCabe (who then kept a school there—the most celebrated school in the South), the father of Mr. E. O. McCabe, who testified here yesterday. I spent the night there and the next day I went on to what is now Roanoke Rapids. I then took up my residence there, and assisted in the work of building this town, with Major Emry, who afterwards became the Managing Director, and I remained there until the latter part of April, 1896. The town was finished before that, but the reason that I did not go back and retake possession of my residence at "The Merry Mills" was out of a feeling of delicacy, for the reason that the Princess Troubetzkoy remarried early in the year 1896, January or February, and I did not wish to reopen talk until the couple had gone abroad, as I knew they intended to do. I also wished to allow sufficient time to elapse to prevent talk. The result was that
67 instead of going back early in 1895 to take up my residence at "The Merry Mills" as had been my intention, I did not go back until April, 1896. Mentally I took up my residence there in the early Fall of 1895; the Town of Roanoke Rapids had been built; my residence had then been removed from New York to a sort of floating existence; I gave up this room in the Everett House for good—I had it from about June, 1892, for about two years, not three, and not less than two, but just a month or so more than two years—I took up a sort of floating existence in the shape of not fixing any established residence.

My intention as to residence in 1894 was "The Merry Mills." I

bought that because of the differences between myself and the present Princess Troubetskoy. Therefore, during the interim before I could take up my residence there I went down and spent the time at Roanoke Rapids. Well, part of the time I was in Europe in 1894, and as I say I went down on February 15, 1895, to Roanoke Rapids, and took up my residence there.

I intended that to be my residence temporarily. I had enough of wandering. I intended to keep this as a habitat at Roanoke Rapids until I would take up my permanent residence at "The Merry Mills." I mentally took it up there; the same as Senator Platt took up his at Tioga, while he lived at New York City, and this thing, I understood, was purely a mental process and as you wished, so your residence was within reasonable limits. I, therefore, in the Fall of 1895, as soon as the real building at Roanoke Rapids was completed, I mentally retook up my residence at "The Merry Mill;" I physically took it up there in April, 1896. I took up my residence
68 there about the latter part of April, 1896—I took up my permanent residence there.

My residence in 1896 was here.

Mr. Miller: This deposition was taken at Charlottesville, Albemarle County, Virginia.

It was always here after my residence at Roanoke Rapids for eighteen months, but I split the residence in the Fall when the work was done at Roanoke Rapids. I wanted to take my residence here, but on account of the affair going on here (I knew there was going to be a marriage here about Christmas time), I was not able to do so.

As to the action I took on leaving New York in regard to my taxes, I had not paid my personal taxes in New York, with the single exception of paying on some $1,200 worth of furniture—that is of record, or should be. I went to the office of the Tax Collector in 1895. I came on from Roanoke Rapids specifically for that purpose. I was then down there running the town; it was all built, the factories and brick plant, etc., going. I came on to New York for a few days. They had charged me with considerable personal property tax, which was unjust, for I only had a few things stored there, worth in the neighborhood of $1,200 to $2,400. The official asked me who I was, and among other things said, "Are you the husband of Amelie Rives." This was just before the divorce was made public.

I smiled, and he said, "You write on the corner of this book
69 exactly what your residence is." I said, "My residence is at Roanoke Rapids, N. C." This was in 1895. That was before I took up this mental reservation, and before the divorce. I said, "My residence is at Roanoke Rapids, N. C. I have a law firm here in which I take practically no part." That is to say, I said I was a silent member of the firm (it should be technically, I understand, another expression non-active). I told him that I did not practice.

I wrote on the margin "My residence is at Roanoke Rapids, N. C.," because, as I say, the mental reservation was that my residence was to be at Roanoke Rapids until the divorce papers were granted between

the present Princess Troubetzkoy and myself, which was some time in September, 1895. I wrote "My residence is at Roanoke Rapids. I am a member of a law firm here, in which I'm only a silent partner, because my work is at Roanoke Rapids, where I have charge of various interests." Words to that effect. That was done in 1895. I can't give the exact language but I remember distinctly that was written in the corner of a large book. He promptly cut them down to $2,400 or $1,200, I don't recall which now, somewhere in that neighborhood. All these statements could be proved by reference to the books in the Tax Collector's office. My residence when I went to New York in February, 1897, was, here, at "The Merry Mills," Cobham, Albemarle County, Va. That has been my residence until the 13th of July, 1905, when I went to Roanoke Rapids, N. C., which is now my residence. This is my place of business, because I am now a professional writer.

It most certainly was my intention to stay permanently at "The Mery Mills," Cobham, Albemarle Co., Va., in February, 1897,
70 immediately prior to my going to New York with Mr. Stanford White. It was my permanent residence, and I intended to keep it so. I went to "The Merry Mills" and established my permanent residence there in the latter part of April, 1896. I stayed at Roanoke Rapids from Friday, the 15th of February, 1895, to the latter part of April, 1896. I remember that date because I put the present Princess Troubetzkoy on the train for the West on that day. I changed my residence officially from "The Merry Mills," Va., to Roanoke Rapids, N. C., on the 13th of July, 1895. There were practically a period during which I claim that my residence was in Albemarle County, Virginia, for a period of ten years, barring a certain period of time when I was in New York. I regarded it as my residence.

"Q. Was the work of building up the Town of Roanoke Rapids completed under your supervision in 1896?"

Objected to as immaterial: objection sustained; exception to plaintiff.

As to my trips to New York from 1895 to March, 1897, I took this trip the Fourth of July, and the one in September, 1895, to protect my property on account of being overtaxed, and I took one more trip to the Horse Show during the Horse Show week. I might add that regarding the year 1894, to show why I was so to speak, moving around, I owned a large piece of property, a 2,700 acre piece of property, known as "Hawkwood," in Louisa County, Va. In October, 1894, I bought this enormous estate of 2,700 acres, with a brick house built before the war, at a cost of $15,000 or $20,000 to
71 build when new. I bought that in 1894 and spent a large portion of my time there, and I started gradually into the business of raising, or training, jumping horses. I am very fond of riding and more than fond of hunting. This house was owned by the late Mr. Richard O. Morris. It was located in Louisa County, Va., about 8 miles from Cobham, a nearer station to it being Poindexter. I got this at a song. The property had got heavily in

debt. There was $13,000 of debt on it. The panic of 1893 was still weighing the country down, and the house was to be sold in the Fall.

The debtors were crowding around, and it was bound to be sold. I was told this, and I thought it was a pitiful state of affairs, that these gentlemen, whose ancestors had gotten the grant to this property from the King, should have it sold over their head. This is somewhat like a novel. However, it was going to be sold. I bought it on a mortgage. I paid $13,000 in cash and gave a mortgage for the balance for ten years, backing my knowledge about real estate. I felt that by that time, 1904, for instance, it would be a big thing.

"64th Q. What was the amount of your investment? A. The amount was actually in cash $13,000, the balance, which was on interest, was $12,000, the interest being $720 a year."

"65 Q. What is the general market value of the property at the present time? A. It was bought, under circumstances to be hereafter explained, by a rich Pittsburgher, and he did not pay anything like its value for it—I will tell you what he paid for it later. Five years ago he valued it at $80,000. He had made his money by hard knocks and work.

72 "66th Q. What is a fair market value for the property in your opinion? A. In my opinion, it was then worth what he valued it at, and since then a railroad has been built within a half mile of his door and increased the value of the property."

"67th Q. In your opinion, a fair market value was $80,000?"

Mr. Milburn: Is this material, your Honor?

Mr. Miller: Yes, sir, it bears upon his property.

The Court: I will sustain the objection to anything further about that.

Mr. Choate: Will that cover questions 64, 65, 66 and 67, the questions and answers?

The Court: I will strike out the 64th answer, from that time on, I will grant the motion to strike it out.

Mr. Miller: I except.

On the morning of February 13th, 1897, I was at "Merry Mills," Cobham, Albemarle County, Virginia.

"Q. Who was your family physician at that time?"

Mr. Choate: That is utterly immaterial.

Mr. Miller: Oh, no, your Honor, they have set up the defense that the man was taken away because of his physical condition, by his family, and all that sort of thing. I expect to show that they never even consulted his family physician as to what his condition was. At any rate it is part of the history of his being taken away from there at that time, which goes to the validity of the proceedings they had in New York upon luring him up here. I

73 don't see how you can divorce this as bearing upon the history of his coming to New York, the way they brought

him to New York. If it is a matter of his health, it is certainly a question to go to the jury as to why they did not go to see his family physician down there.

The Court: It might be admissible on the question of what his residence was at this time, but I doubt whether it is material where his residence was. If he was in fact in the City of New York when this proceeding for the appointment of a committee was begun, as I understand it, the Supreme Court had jurisdiction, whether he resided here or did not reside here.

Mr. Miller: Your Honor must hear me on that subject before you rule, because it is a vital question.

Mr. Milburn: Or that he had property here that gave jurisdiction to the Court.

The Court: If a man is traveling and arrives here from Europe, for instance, and is taken insane or is charged with being insane, at a hotel here, the Supreme Court, as successor to the Chancellor, has jurisdiction to take proper proceedings which are necessary in the case of an insane person.

Mr. Miller: I think your Honor is laboring under some misapprehension on that subject. If it can be shown to the satisfaction of the jury that he was lured into the State for the purpose of being thrown into Bloomingdale, the proceedings upon which he was thrown into Bloomingdale are void upon their face and have no force and effect in any Court in the country. I want to submit authorities on that.

74 The Court: It is not necessary to discuss it. Mr. Sherman is not responsible for the acts of those who put him in Bloomingdale.

Mr. Miller: But that is the manner in which the Court got jurisdiction of him. He could not have gotten a residence during the three or four years he was in Bloomingdale. If he was lured here for the purpose of throwing him into Bloomingdale, the three years in duress in Bloomingdale did not give him a residence. They got jurisdiction over him in this proceeding—if they lured him here and committed him—and the 1899 proceedings involve both proceedings, as shown in the record, they could never get jurisdiction over him by keeping him in duress in Bloomingdale. The thing falls at its inception if they lured him here to get jurisdiction over him to make that judgment. We might just as well stop right here and go into that question. The commitment proceedings we contend were void for several reasons. There was fraud and trickery in luring the plaintiff, John Armstrong Chaloner, a resident of Virginia——

The Court: I don't care to hear that discussed. I will assume for the purpose of this case that he was lured. The man is physically there. The proceedings started to have him adjudicated a lunatic by a proper proceeding on an inquisition. The question is, are those proceedings void, it is not whether the order of Judge Gildersleeve, on Dr. Starr's certificate taking him to the asylum is void.

Mr. Miller: We contend, and our fight here this morning will be to show that the 1899 proceedings on which the commitment was

had were absolutely void. In order to show that the very
75 first principle is that they must have jurisdiction over this man. If they lured him from his home in another state for the purpose of getting this State's Court jurisdiction over him, and if we show that they never would have had that jurisdiction over him in 1899 except from that luring, then the 1899 proceedings of course must fall. They have nothing to stand upon. He was a resident of the State of Virginia when they lured him away, and he did not acquire a residence in New York by being confined in Bloomingdale.

The Court: He is physically there.

Mr. Miller: But it was the circumstances of fraud and trickery which gave the State Court jurisdiction of his person which we attack here, and are trying to show, and if they got that man under the jurisdiction of that Court in 1899, by fraud and trickery, why then the whole thing is void, and it is my purpose to show that.

The Court: I do not think it is material. If they brought him here—assume your case, that they lured him here, got him to come here for the purpose of taking some kind of proceedings against him, the fact that he is here, that it is charged that he is insane, and that thereupon a proper proceeding is taken in the Supreme Court which results in a judgment that he is insane, that judgment is perfectly valid no matter how he was brought here.

Mr. Miller: No, sir, your Honor, because the first proposition is that they must get jurisdiction over the man, and if they only got jurisdiction by fraud and by trickery, by luring him from his home State, and only got jurisdiction over him in 1899 by that process, it is void.

76 The Court: That would be so if it were a suit to recover money on a debt. This judgment determines the status, determines the condition of the man's sanity or insanity, and that is a fact which does not depend on how you get the man within reach of the Court, in my opinion.

Mr. Miller: There have been several errors made by lower courts in this case which have been unanimously reversed by the Court of Appeals. We don't want to have that happen here. I refer to the case of Carpenter v. Spooner, N. Y. Superior Court Reporter, page 717:

"This Court will not sanction any attempts, by fraud or misrepresentation, to bring a party within its jurisdiction. Where a party, having been induced by a false statement to come within the jurisdiction of the Court for the purpose of effecting service upon him, was then served with a summons and complaint in an action in this Court, the service was, on motion, set aside."

The Court: That is perfectly familiar law. This was an action for libel. If in a suit for tort, or a suit on a contract, a party is fraudulently drawn within the jurisdiction, the summons will be set aside on motion.

Mr. Miller: Would you mean to take the position—I don't mean to say it in any disrespectful way, that if you can not get jurisdiction over a man's $25 debt by trickery and by fraud, that you can lure

him into a State and take ex parte proceedings, without notice to him, and throw him into an asylum, deprive him thereby of his liberty for an indefinite period, probably for life, and of all of his property thereafter, as part of a conspiracy, that the Court would dismiss the complaint and the whole proceeding, because it had gotten the summons on him in the case of a $25 debt, and would let it stand if he had been deprived of his liberty for life and his millions of property? That goes to the very essence of our liberty, the due process of law, and everything else involved.

77

The Court: The provisions of law providing for proceedings to determine the status of a man who is suspected of being insane, are for the benefit of nobody in the direct sense.

Mr. Miller: They ought to be.

The Court: Ought to be. It is for the protection of society or for the protection of the man himself. No matter how he comes to any particular place, how he is brought or by what fraudulent means he is brought there, if it be claimed or suspected that he is insane, has lost his reason, in which case there is always in the first place, danger of his injuring other people, danger of his injuring himself, danger of his squandering his property—in other words, a person who deserves the care and protection of the Courts, and who has suffered a terrible calamity; but under those circumstances it does not make any difference how he got where he is, it is the duty of the Court, if the question is properly brought before it, the proper Court, to inquire into his condition, and if it finds that he is in this condition, to take proper steps to protect him and the community, and his property.

Mr. Miller: But the proper place to do that is in the proper Court, the Court of his home jurisdiction, and not lure him away from his residence and get jurisdiction of him by a conspiracy when the Court would not otherwise have it.

The Court: I don't think so at all. It is the proper duty of the Court in the place where he is, for the protection of the community where he is and for his own protection, immediately on the spot, and not to say that no Court can deal with an insane man excepting the Court where he lives. A gentleman comes here from France and becomes insane in New York, nothing can be done until he goes back to France? That is not my view of what the law is.

78

Mr. Miller: You don't think that a principle of law applying to a $25 debt is good enough to apply to a man who has been adjudged to lose his liberty and property without trial. I cannot see how due process of law can apply in that way. I except.

"Q. Did you receive a letter or telegram from Stanford White in February, 1897?"

Objected to as immaterial; objection sustained; exception to plaintiff.

The Court: Mr. Miller, in order to protect your rights, I think if you have one exception on a line of evidence for the purpose of appeal it is just as good as if you have 50. It seems to me that you

might, if you wish, make an offer. Any testimony that you wish to offer in regard to the question of the sanity of Mr. Chaloner, I shall exclude. Any evidence that you wish to offer tending to show that he was lured into this State, I shall exclude, if that is the only object of the testimony.

Mr. Miller: And that he was a resident of another State?

The Court: No. The fact that he is a resident of another State, when the suit was brought, seems to me to be proper on the
79 question of citizenship; but the question, so far as the validity of the proceedings to have him adjudicated a lunatic is concerned, is, in my opinion, entirely immaterial, entirely immaterial as to what State he was a resident of. If he was not here as a matter of fact, or if it goes to show that he was not in Bloomingdale, or that Bloomingdale was not situated within the jurisdiction of the Court, that would be material, but the fact that he was not at the time a resident of this State, or that he was a resident of some other State, so far as the validity of the proceedings to adjudicate him a lunatic is concerned, is immaterial.

Mr. Miller: That is the purpose of the evidence, and I offer all the evidence along that line in this case.

The Court: I exclude it.

Mr. Miller: And in my bill of exceptions if I have to go up, that can be incorporated?

The Court: I think you should only put into the record—you have offered specific cases enough to raise the point. You offer generally to go on and prove the subject, and I say I will not allow any evidence to be taken. That is all you want on the record. One exception on appeal is just as good as a hundred on the same point.

Mr. Miller: Exception.

If your Honor please, we will show you that this whole proceeding, which embodies both records, the 1899 proceeding, is void on its face, for twenty odd other fundamental reasons, which involved due process of law.

The Court: If it is on its face it is in the record already, and you can argue that when you get all your evidence in. Finish your evidence and rest, and when you get through I will hear you.

80 Mr. Miller: I want to offer, of course, all the evidence which we have in the record here bearing upon the question of the plaintiff's sanity and business capacity at all the times mentioned here in the complaint. I take it it will not be necessary for me to read or re-read the names.

Mr. Choate: What is that?

Mr. Miller: I offer all the balance of the evidence taken in this case bearing upon the question of the sanity or business capacity of the plaintiff here. If you want me to read it I will do so.

Mr. Choate: That is not a proper offer, because we cannot tell what is in it, what he may consider in that mass of five volumes as bearing on that question. We have no objection to his offering to prove.

The Court: Undoubtedly if they desire it you will have to point out what you offer.

Mr. Choate: Of course, I don't desire to put the Court in the absurd position of listening to all that.

The Court: I should think it would be clear enough in the record, what does bear purely and simply on the question of insanity.

Mr. Choate: Would not the rights of all the parties be protected by an offer to prove on Mr. Miller's part?

The Court: I should think, Mr. Miller, if you offer to give evidence tending to prove, as you claim, that Mr. Chaloner is sane and always has been sane, that that would meet the case.

Mr. Miller: And that all the proceedings against him were by virtue of fraud and conspiracy.

The Court: That is rather large.

Mr. Miller: And that, of course, relating to all of the depositions which we offer here, which have been opened in this case
81 by order of the Court. I can read them if they want me to read them, but I don't want to do that unnecessarily. Is that satisfactory?

Mr. Milburn: I would like to deal with one question at a time. As I understand, counsel offers evidence in the depositions to show that Mr. Chanler is sane, and always has been a sane man, and we object to that, and the Court excludes all that testimony on the ground that it has no materiality, and there is an exception on their side. Now, that must settle that point.

The Court: Yes.

Deposition of JOHN B. DICKINSON, a witness on behalf of the plaintiff, taken at Charlottesville, Albemarle County, Virginia, on the 14th day of October, 1908, read on behalf of the plaintiff, as follows:

My name is John Byvancke Dickinson, 38. I now reside at Hamilton, Bermuda. My profession is the practice of medicine. I got my professional education at Richmond, Va. I have been practicing medicine 15 years. I have made a specialty of the eyes, ears, nose and throat for 10 years. During those 10 years I have practiced 2 years in Columbus Ohio, 8 years in Bermuda. I am now in active practice. In addition to my private practice I do work for the English Navy and English Army—R. N. and R. A. M. C. I have known the plaintiff in this case intimately, that is, well acquainted with him, for about 15 years. I have seen quite a good deal of the plaintiff in the last month.

82 "Q. Please state what is the present color of the plaintiff's eyes?"

Mr. Choate: That is objected to as incompetent, immaterial and irrelevant.

Mr. Miller: I offer it to contradict the evidence, and to show that the evidence of the alienist upon which the man was committed was false and perjurious and fraudulent, bearing upon the bona fides, and that it deceived and misled the Court.

The Court: I will sustain the objection. You should have given that evidence on the trial of the case.

Mr. Miller: We had no notice or opportunity to do anything at either hearing.

The Court: We cannot try over here again, in my opinion, the question which was tried before the Sheriff's jury.

Mr. Miller: I except to that.

Mr. Miller: I offer specifically in evidence the testimony of Winthrop Astor Chanler, taken by the defense in this case, in support of our contention that the proceedings were fraudulent and that the defendant was lured into the State for the purpose of getting jurisdiction over him for these judgments.

Mr. Choate: We object to it as immaterial and irrelevant, within the ruling of your Honor.

Mr. Miller: Your Honor, this is their own deposition, taken on their own motion.

The Court: Anything in it which tends to prove anything which is open to proof in the case I will take, of course. You say, as I understand it, that it was offered in support of your claim that Mr. Chaloner was lured into the State. Now, I hold that
83 any evidence upon that question is immaterial, whether he was or was not. We may assume that he was, for the purposes of this case.

Mr. Miller: I except to your Honor's ruling, if your Honor please, and for the purpose of getting the record to conform to the demands of the technical gentleman on the other side, I will have to read some of the questions and answers in this deposition, I guess.

Mr. Milburn: I am not making any demands.

Mr. Miller: I will read from page 8 of the deposition of Winthrop Astor Chanler:

"Q. Where did your brother live during the time that he was engaged in the practice of law, either as a member of the firm of Chanler, Maxwell & Phillip, or of Chanler & Phillip?"

Objected to as immaterial; objection sustained; exception to plaintiff.

"Q. No, but do you know whether they occupied a house in Virginia? A. I know that they stayed there with her father, at her father's house, and she was there most of the time.

"Q. You mean you do not know anything about it? A. I mean that is all I know about it. He was in New York a great deal—most of the time, I should say. I want to make it plain, that I know very little about his movements in that way. His wife was an invalid immediately after they were married, and she rarely left Virginia. Sometimes they would go on visits, possibly to Newport, and stay with friends in New England, or here in New York, and sometimes be up at Barrytown. But I could not tell you what his residence was.
84 "Q. What did you do subsequent to reading the letters which had been received from Virginia and which you had read?"

Objected to as immaterial; objection sustained; exception to plaintiff.

"Q. What else did you do, Mr. Chanler?"

Objected to; objection sustained; exception to plaintiff.

"Q. Did Stanford White or Dr. Fuller go down to Virginia at about the same time?"

Objected to; objection sustained; exception to plaintiff.

"Q. You don't remember whether you went with them or not?"

Objected to; objection sustained; exception to plaintiff.

"Q. What is your best recollection upon the subject?"

Objected to; objection sustained; exception to plaintiff.

"Q. Did you see your brother on that occasion?"

Objected to; objection sustained; exception to plaintiff.

"Q. Did you see him at any time on that trip to Virginia?"

Objected to; objection sustained; exception to plaintiff.

"Q. Who was with him?"

85 Objected to; objection sustained; exception to plaintiff.

"Q. Do you know whether they got on the train that you were on?"

Objected to; objection sustained; exception to plaintiff.

"Q. Do you know where they went?"

Objected to; objection sustained; exception to plaintiff.

"Q. Did you see your brother after that?"

Objected to; objection sustained; exception to plaintiff.

"Q. What is the value of the real and personal property of the company, to the best of your judgment? By the way, are you an officer of the company?"

Mr. Miller: That refers to the United Industrial Company.

Objected to as immaterial and irrelevant; objection sustained; exception to plaintiff.

"Q. What is your position?"

Mr. Choate: Objected to as incompetent, immaterial and irrelevant.

The Court: I don't know about that previous question. If you should be entitled to recover, the jury should know what the value of the property is. If you gentlemen cannot agree as to what the value of the property is, he should be allowed to give proof of what it is.

Mr. Choate: My contention is that at the present time there
86 is no evidence which would justify proof of damages.

Mr. Miller: My contention here is that there are twenty-five fundamental reasons which make this void.

The Court: I think you should stipulate what the value of this property is, or else I shall admit evidence about the value of it.

Mr. Miller: I am perfectly willing to do that.

The Court: I suppose Mr. Sherman knows what property he has in hand. If the plaintiff is entitled to recover at all he is entitled to recover all he has, I take it.

Mr. Choate: All that he had at the time of the complaint, the value of it at that time.

The Court: I suppose it would be a matter of accounting, and they can decide that here, perhaps. He would be entitled to compensation and all that, probably. I will take evidence of the value.

Mr. Milburn: Suppose we take that up later. We can make an effort to stipulate as to value.

The Court: Wasn't there in the depositions taken a copy of the inventory, filed, which shows what the property was? Why don't you put that in evidence?

Mr. Miller: Is it understood that the inventory showing the property that came into your hands—that you will stipulate that that will be the subject matter of the judgment here, if the jury has it to consider?

Mr. Choate: That depends on the date of the conversion, if any be proved.

Mr. Miller: I am willing to stipulate with you that the amount of money which had been received into the hands of Mr. Sherman, or his predecessor, from the estate of John Armstrong Chan-
87 ler, on April 4, 1904, the date of the demand, shall be the amount involved in this suit.

Mr. Choate: I cannot enter into a stipulation now, because I am not familiar enough with the facts. The accounts have been judicially settled, which undoubtedly are correct, and we would like to rest on them, only they do not cover the value of some of the stocks, which are of uncertain value.

When I say "we" and "us" I refer to the United Industrial Company. I am an officer of the company. I am President of the company. It has two mortgages on it, one for $16,000, of which I sold half, and my brother, J. A. Chanler, the other half. The second mortgage held by him, or by Mr. Sherman, his committee. I forget the exact sum, but it is something between $30,000 and $40,000. That mortgage for $35,112.64 is dated on or about September 15, 1898. I think so. That may have the interest added to it—I do not know—the sum you mention. I have not had any appraisal of it made. The mill is at present leased to the Carolina Fibre Company, of South Carolina, I think, for a certain sum. They have an option to buy it in, I think, five years, at $100,000. The present lease does not pay the mortgage interest. In my judgment $100,000 is a fair valuation of the property of the company. It is cheap at $100,000. $100,000 was originally the capital stock of the company.

I am not perfectly sure of my figures, but I think there are 2,000 acres of real estate. I am not now certain without referring to the

books. Of the entire real property that we put into it, there
88 is the canal, the power that that produces now, the rent from the farm, the rent from the mills there now—there is some personal property, money in the bank. How much at this moment I do not know. I should say there is $1,000. I am not able to say if there is $2,000 without consulting the President. I could get some information from Mr. Sherman. Mr. Sherman is not a Director. Mr. Sherman has not taken any active part in the management of this company. He has never been represented on the Board as long as I have had anything to do with it on the Board. He has voted on the stock as a committee. He has, by giving me power of attorney to vote. I voted it for him. The Roanoke Rapids Power Company have never paid any dividends. I have been Treasurer, I think, almost since the beginning of the thing. It was begun at the same time the United Industrial Company was started. That was in '95, I think, or something like that. I can't give you the exact date. That was while my brother was living down South; lived down there that one Winter; he was the resident Director. He was the resident Director at Roanoke Rapids, I should think; he was there for the Winter. We all bought houses and built houses down there, and leased them out. He had several he lived in when he used to go down there from here. The Merry Mills is a farm at Cobham, Virginia. My brother owns it. I don't know how long he has owned it. I have never been there.

"Q. You never visited you brother? A. He has never asked me to."

Mr. Milburn: I object to that question and ask to have the
89 answer stricken out.

The Court: Objection sustained and answer stricken out.

Mr. Miller: Exception.

"Q. How long is it that you have been estranged?"

Mr. Choate: Objected to.

The Court: Objection sustained.

Mr. Miller: I offer that also as bearing upon one of the motives back of the conspiracy and the luring.

The Court: I sustain the objection still more strongly on that ground.

Mr. Miller: I except.

Juror No. 1: Who is being questioned?

Mr. Miller: Winthrop Astor Chanler, a brother who signed the petition to throw him into the lunatic asylum.

"Q. You have never gone of your own accord?"

Objected to; objection sustained; exception to plaintiff.

"Q. Never sought an invitation?"

Objected to; objection sustained; exception to plaintiff.

"Q. You have had quarrels with your brother, haven't you?"

Objected to; objection sustained; exception to plaintiff.

I was once President of this United Industrial Company,
90 when it was first started, I am not sure of the date. He kicked me out, if that is what you mean. He insisted upon my resignation. He always had control of the company.

"Q. And that was at that meeting at the Kensington Hotel to which you have referred in your direct examination as taking place in December, 1896, wasn't it? A. December or January, but I am not certain of the date. My impression was it was in December, sometime before or after Christmas Day—may have been after the New Year.

"Q. Was there an altercation between you at that meeting at which he kicked you out, as you say?"

Objected to; objection sustained; exception to plaintiff.

"Q. Well, wasn't there some quarrel between you with reference to a suggestion that the plaintiff made about an examination of the books of your father's estate?"

Objected to; objection sustained; exception to plaintiff.

"Q. And that was about this time of this meeting?"

Objected to; objection sustained; exception to plaintiff.

"Q. Will you tell us what you remember of that?"

Objected to; objection sustained; exception to plaintiff.

"Q. Who was your co-Executor? A. My brother Lewis.
91 My brother never qualified. He was appointed, but he never qualified.

"Q. Lewis is the other petitioner?"

Objected to; objection sustained; exception to plaintiff.

"Q. Wasn't there really a good deal of ill feeling between all the members of your family, on the one hand, and John Armstrong Chanler, on the other, ever since his marriage?"

Objected to; objection sustained; exception to plaintiff.

"Q. Wasn't there considerable complaint among your brothers and sisters that they were not invited to his wedding?"

Objected to; objection sustained; exception to plaintiff.

"Q. Didn't you yourself write—"

Objected to; objection sustained; exception to plaintiff.

"Q. Well, how many of you felt that way?"

Objected to; objection sustained; exception to plaintiff.

"Q. Then you estimate that $200,000 would be the full value of all the property that the Roanoke Rapids Power Company owns—— A. I mean if anybody paid that price for it they would be getting a very cheap piece of property. It is worth a great deal more than that. I have no intention of selling out my stock in it; in fact, I am just about to put more money in it."

That is not what the property was worth when Mr. Sher-
92 man was appointed committee. It has increased in value very much. I should say, in June, 1897, it was a wilderness; there was nothing there but the power canal dug. It was a wilderness when we went there first. That was after my brother was up here. There was nothing there but two mills of the Roanoke Mills Company, which were put up by the southern end of the concern. Half of the Roanoke Rapids Power Company belongs to certain Southern people and half belongs to my family. We each had to put up a mill, according to our agreement. They put up a mill which has paid enormously and is going on right along, that has its own cottages, its own stores, and like that. It has, from time to time, leased—the people that come to live there lease our cottages. And the only other mill there was the United Industrial Company. Our cottages have always been rented when that was running, and when it was not running a good many would be vacant, because the help would leave. There was a lawsuit in North Carolina or Virginia about this Roanoke Rapids Power Company property, in connection with the sale of the machinery. I do not know that there was a lawsuit; I do not know that it got as far as that. My brother got an injunction. That was in the Court of Halifax County, I think, North Carolina. That is the United Industrial Company; that was not the Roanoke Rapids Power Company; that has never had any lawsuit. There was a lawsuit against the United Industrial Company. The suit was against the United Industrial Company. It was brought by my brother, an injunction.

The injunction has not been dissolved yet. We are hoping
93 to get it done. I do not remember the title of that suit.

I can tell the circumstances. The machinery in the mill was deteriorating right along for want of use. It was a peculiar machinery, made for the knit goods trade. The mill had always been a failure in making knit goods. The offers that we had for the property—people coming and wanting to lease it, people wanting to buy, they had always said, 'We don't want your machinery.' So we decided that the best thing to do was to sell the machinery while it was still of some value, and get rid of it and have the empty mill standing there for a man to come in and put in his own. After a great deal of trouble we finally succeeded in getting a purchaser who gave us a round sum for it, $8,000—that was the best we could do, and as I was advised—we were advised all around, that it would be much better to do it, because otherwise it was junk, it would deteriorate and become junk. We sold it to this man, and he went down there with his workmen to remove it from the mill. My brother was informed of the proceeding and instructed an attorney in the neighborhood to get an injunction to stop it, stop the machinery from leaving the mill. We went down there and saw his lawyer, my brother's lawyer, and talked the thing over with him, with the result that my brother agreed to the machinery leaving the mill and the sale going through, on condition that the money for that purpose should be held by the Receivers appointed by the Court, one of whom was his lawyer and the other was ours. This

injunction was obtained quite recently, in June, 1905. I thought it was in the Autumn, but it was probably in the Spring. Oh,
94 yes, they held off, they let the stuff go through, providing we sent the money down there, and that was in October.

It is probably right that it was in October, 1904, that the injunction was obtained, and that it was made permanent June 20, 1905. I think now that the property of the United Industrial Company was cheap at $100,000. I did not think so at all except on account of the one thing we had there. I did not think that the mill was worth that or the land was worth that. We had the right to free water there, 500 horse power.

"Q. What is the equity worth, if the property is worth $100,000? A. Take off the mortgages, you mean?

"Q. Yes. A. Mortgages and other debts must run up to $60,000. I should say about $40,000.

The United Industrial Company has not increased in value. It has been a dead weight on the progress of the Roanoke Rapids Power Company. There has been certain deteriorations ever since the mill was closed. The mill was closed after June '97. It was while Mr. Stanford White was looking after my brother's property that these leases were made—both leases were made. There has been a constant decrease ever since the mill was closed. There has been a decrease since June, '99. The property of the United Industrial Company consists of the mill; I do not know that the United Industrial Company owns, as a company, any cottages. I am an officer of the United Industrial Company now. I was compelled to retire in December, '96.

95 "Q. Then your brother was committed to Bellevue Hospital?"

Objected to; objection sustained; exception to plaintiff.

"Q. And when did you again become an officer of the United Industrial?"

Objected to; objection sustained; exception to plaintiff.

My brother, J. A. Chanler, owns the controlling interest in the United Industrial Company. He owns a majority of all of the stock of the company.

"Q. Then you owe your presidency to the votes given by Mr. Sherman as committee?"

Objected to as immaterial; objection sustained; exception to plaintiff.

I know what has become of the second mortgage which was held by my brother at the time of his commitment. Mr. Sherman has it. It has not been foreclosed. No interest has been paid on the second mortgage. The first mortgage has never been foreclosed. No interest has been paid on it.

"Q. Do you know it has not been foreclosed?"

Objected to; objection sustained; exception to plaintiff.

I testified to the condition of 298 Broadway in the early part of

1899, that is to say, about the time I applied for the appointment of a committee. I examined that building, I have been over
96 the building. Been in it, I should say, at that time, and several times since gone in there to get things that were stored there. We have stored—the things from my brother's office were all taken up and stored there when his office was given up. My desk was in there for years. I do not think the present building was there at the time of his commitment to the asylum. I think it was built while he was in the asylum. Very likely my brother himself suggested the raising of a builder's lien for the purpose of building it. I do not know if that suggestion was made while he was in the asylum.

My brother told me about his mortgages. That conversation was prior to this meeting in December, '96, of which we have spoken. Not long prior. It might have been during those days that I saw him then. Long prior, too, I knew of the mortgages he made, more or less. Mortgages on his own property that he owned outright, that was not in the trust; 298 Broadway and the Third Avenue property, which he managed in his own office.

"Q. Did he tell you what he raised this money for?"

Mr. Milburn: I object to that. What is the materiality of conversations between these men?

Mr. Miller: I expect to show that he raised this money on this property to keep up the St. Margaret's Home for Girls, which was not the act of an insane man.

The Court: If that is the purpose, I sustain the objection.

Mr. Miller: Exception.

97 "Q. Well, did you criticise his raising the money to buy out your brother Robert?"

Objected to; objection sustained; exception to plaintiff.

"Q. Then, these mortgages were placed on the plaintiff's property for the purpose of making a purchase which you had suggested to him; is that so?"

Objected to; objection sustained; exception to plaintiff.

"Q. Did you ever see any power of attorney which Mr. Stanford White had from your brother after your brother was committed to the asylum?"

"A. To the best of my knowledge and belief, I did."

I do not know anything about that power of attorney. I may have seen it, but I had nothing to do with the making of it. To the best of my knowledge and belief, I saw it. I do not know when—around about that time. Mr. White showed it to me. At his office, probably. I do not know where. He may have shown it to me at Mr. Butler's office. I think he showed it to me because I have a strong recollection of the thing having been obtained at that time, while my brother was in the asylum at Bloomingdale. I did not suggest to Mr. White that he should obtain a power of attorney from my brother while my brother was in the asylum. I

do not know who did. I did not mention to Mr. Sherman any information that my brother had any household furniture, at the time when he was committed to the asylum. I do not know
98 whether he had any place in New York at that time where he kept household furniture. I don't know whether he had or not. I do not know how often he came to New York during five years prior to his commitment to the asylum. I can't tell what year he was in North Carolina or some State in the South, taking charge of the affairs of the United Industrial Company, or of the Roanoke Water Power Company, without looking it up. He was absent for one entire year, from New York, when he was abroad. When he was resident Director of one of those companies. He was absent for a year, to the best of my recollection it would have been in 1896, I should think. He was resident Director of the Roanoke Company. That was in the State of North Carolina. My brother's residence was in North Carolina, Roanoke Rapids, I think. I don't know when he changed from Roanoke Rapids to Merry Mills.

"Q. When did you and Mr. White and Fuller go South shortly prior to your brother's commitment—in what month?

Objected to; objection sustained; exception to plaintiff.

"Q. Your brother was committed March 10, 1897?"

Objected to; objection sustained; exception to plaintiff.

"Q. You retained Jay & Candler to conduct the proceedings, didn't you?"

Objected to; objection sustained; exception to plaintiff.

99 Q. And you consulted with them as to the witnesses to be produced, didn't you?"

Objected to; objection sustained; exception to plaintiff.

"Q. And didn't that question come up as to whether Hartnett ought not to be produced?"

Objected to; objection sustained; exception to plaintiff.

"Q. Has be been in your brother's, the plaintiff's employ at all since your brother was committed?

Objected to; objection sustained; exception to plaintiff.

The Court: The witness is Mr. Winthrop Chanler?

Mr. Miller: Yes, Winthrop Astor Chanler.

"Q. Didn't you say he kicked you out of the office of President of the United Industrial Company in December?"

Objected to as immaterial and irrelevant; objection sustained; exception to plaintifffff.

"Q. You were present at that inquisition and gave testimony, didn't you? A. Do you mean the Sheriff's Jury?

"Q. Yes. A. Yes."

I retained Jay & Candler to conduct the proceedings, and I suppose I consulted with them as to the witnesses to be produced.

"Q. Did you say he kicked you out of the office of President of the United Industrial Company in December?"

Mr. Choate: I think we had that before, and it was objected to and excluded.

The Court: This is something relating, as you claim, to the value of the property?

Mr. Miller: No, sir, my purpose in offering it is to show the motive and bad faith.

The Court: I will sustain the objection.

Mr. Miller: Exception.

"Q. Under those circumstances why didn't you send Lewis Chanler down there to investigate your brother's condition of health instead of going there yourself—wasn't Lewis more friendly to him than you?"

Objected to on the same ground; also on the ground that the question is defective in form; objection sustained; exception to plaintiff.

"Q. So that Mr. Carey had not seen your brother for at least two years prior to the time of commitment?"

Mr. Choate: Objected to on the same ground.

Mr. Miller: Mr. Carey was one of the three men who swore to the petition, and swore of their own knowledge he was acting queerly and doing all of those queer things in Virginia, and on the strength of these affidavits of Lewis Chanler and Winthrop Astor Chanler, the man was committed. He swore in the petitioning papers here that of his own knowledge this man was acting queerly down there and doing all of those queer things. Now, we are asking the
101 other petitioning party here if it is not a fact that this man Carey had not seen the man in two years?

Mr. Milburn: I object.

The Court: Sustained.

Mr. Miller: An exception.

"Q. You probably remember that in your application for your brother's commitment you and Mr. Lewis Chanler and Mr. Carey signed a petition in which you state that, 'Mr. John A. Chanler has for several months, while at his home in Virginia, been acting in a very erratic manner. He has limited himself to a peculiar diet; he has burned his hands by carrying hot coals in them; he has devised many peculiar schemes such as a roulette to beat Monte Carlo, and he has given as a reason of these and other acts that he is inspired by a spirit which directs him; for the past three weeks entirely he has constantly talked of these delusions; has neglected his health; has injured his person and has been at times highly excited,' and then all three of you sign an affidavit stating that you knew the contents of the foregoing petition, and that the same was true of your own knowledge, except as to the matters therein stated to be alleged on information and belief; and there are no matters in the petition which are stated on information and

belief; now I ask you how did you come to make that affidavit of these facts of your own knowledge?"

Objected to as immaterial and irrelevant; objection sustained; exception to plaintiff.

"Q. Do you remember that in your petition you did not state the name of a single one of the witnesses on whose report you claim to have acted?"

102 Same objection; objection sustained; exception to plaintiff.

"Q. And that the statements contained in this petition were very solemn statements?"

Same objection; objection sustained; exception to plaintiff.

"Q. And that you considered very carefully this statement, didn't you, 'Mr. J. A. Chanler has for several months while at his home in Virginia, been acting in a very erratic manner?' "

Same objection; objection sustained; exception to plaintiff.

"Q. Why did you speak of his home in Virginia? Did you know he had a home in Virginia? You call it a home? A. I didn't say I called it a home."

I didn't write the petition. I signed it and swore to it. I know what home means. I distinguish between home and residence in this way; My residence has been for past years in Newport, Rhode Island, where I have a house. I have been living two years in Geneseo, New York, in the Summers, and spend the Winters in New York City. I consider wherever I happen to be living as my home for the time.

I don't consider Newport my residence, because I rent the house and am away from it, and if people say, "Where do you live?" I would say in Geneseo. I vote in Newport and I am a Rhode Islander. I don't think there is any particular difference. I don't think home applies to residence in that sense.

103 I testified on my direct examination that my brother resided at various times in this place and in that place. I should say 'residence' is defined by a man's legal address where, if I have to sign a paper I put in my residence, and my residence is where I vote and pay personal taxes, I suppose. That is the way I look upon it. Where I now reside or now live may not be where I vote and pay taxes.

When I speak of residence I don't mean the place where a man votes and pays taxes. I don't say that. For instance, if I draw a will here in the City of New York, I would have to put in the will where I live, where I come from. If I sign a mortgage or transfer of property I would have to put in there up to this year when I had given up my residence, Newport Rhode Island, is the place where I come from, where I considered myself a citizen of.

I don't know where my brother ever voted or that he ever did vote.

I don't know where he paid taxes as a resident in 1895. I do not know that he swore before the Tax Commissioners of New York City that he was not a resident of this State in 1895. I do not know anything to the contrary. I do not know that he paid taxes as a resident in Virginia in the year 1895. I do not know anything to the contrary. I do not know that he did not pay taxes in Virginia. I do not know where he paid taxes or voted at any time prior to his commitment to the asylum.

"Q. But you do know where he made his home, because you swore to it here, didn't you? A. I swore to where he was living during that year."

104 I call it his home in that paper, yes. I used that word without a thought about it. I mean by calling it his home, where he was living at the time. I didn't know he was living there of my own knowledge. I swore of my own knowledge. I don't know what my own knowledge was. I can't say exactly that I honestly understand, after your cross examination, the difference between swearing to this of my own knowledge and swearing to them on information and belief. You ask me whether I know of my own knowledge he was living at Cobham. I say I saw him on the platform of what I think was the Cobham station, and he boarded the train with Stanford White and Dr. Fuller. I was on that train. That is the only knowledge that I had that he was living in Virginia.

I did not speak in Charlottesville at that time with Mr. Moon. I did not know him. I met him in this office, or in the office of the old firm (meaning Evarts, Chote & Beaman).

"Q. Was that when he was employed by Mr. Butler in connection with your brother's the plaintiff's, affairs? A. To the best of my recollection, yes."

Mr. Choate: I object.

The Court: Sustained.

Mr. Miller: The purpose of it is to show that Mr. Moon, the attorney at Charlottesville, Virginia, was the representative of this committee and had full notice, appeared in court and got an adjournment in the Virginia proceedings, and that they had full notice therefore of all the Virginia proceedings, and knew of the judgment reached prior to this committee's application or
105 appointment here, so that they were on full notice when they made the application for the appointment of Mr. Sherman that the motion——

The Court: I sustain the objection.

Mr. Miller: And also to follow it up by showing that Mr. Sherman did not give Mr. Chanler any notice or that none of the parties who were pleading for the application of the appointment of Mr. Sherman gave Mr. Chanler any notice of the application, though at the same time they knew he had been adjudged sane in Virginia weeks before. Your Honor still overrules it?

The Court: I exclude any evidence tending to show that.

Mr. Miller: An exception, please. I take it I can show later or by the record itself that they are void—I have the right to offer the Virginia record again.

"Q. Didn't he represent Mr. Butler in a certain proceeding in Louisa County, Virginia?"

Same objection; objection sustained; exception to plaintiff.

"Q. Do you know in what connection you met Mr. Moon in Mr. Butler's office?"

Same objection; objection sustained; exception to plaintiff.

"Q. And it was while that suit was pending?"

Same objection; objection sustained; exception to plaintiff.

The Court: I call your attention again to these thousands
106 of questions all tending to prove that Mr. Moon was down there in Virginia and knew about that. Now, if I exclude one of them, and that is recognized, you are just as well off as if you read all the rest.

Mr. Miller: I don't mean to be trespassing unnecessarily, but it is hard to get at just what I want in the great bulk of testimony here, although there are some things I don't want.

The Court: Because you have taken an enormous amount of testimony ought not to be a reason why it should have to be all read, page by page, when it all relates generally to a subject which the Court announces it will not allow any evidence to be given about.

Mr. Milburn: In the minutes this morning the very first question that was read, as I remember, was on page 8.

The Court: If you wish to add anything which the other side have not, hadn't you better put it in as part of your case?

Mr. Milburn: This is merely to call your Honor's attention to see if I am right about a ruling that was made. The question was, "Where did your brother live during the time he was engaged in the practice of law, whether as a member of the firm of Chanler, Maxwell & Phillip, or of Chanler & Phillip; where did he live?" Now, I am not clear in my recollection whether that was admitted in or whether it was excluded. It was the first thing put, and I think it should have been read, because your Honor has read everything about the residence.

The Court: I don't remember that it was read.

Mr. Milburn: I want to withdraw my objection to that
107 question, if I made one. I am willing that the answer to that question shall be read in now as though we hadn't objected to it.

The Court: Objection withdrawn.

Mr. Miller: I offer the whole deposition in evidence. It is your deposition. I offer it in evidence in its entirety.

The Court: Do you object to it?

Mr. Milburn: Yes.

The Court: I sustain the objection to it as a whole.

Mr. Miller: I take an exception to that, if your Honor please. (See Stipulation, page 301.)

Deposition of FREDERICK K. PAGE, a witness on behalf of the plaintiff, taken at Albemarle County, Virginia, the 14th day of October, 1908, read on behalf of the plaintiff (p. 175), as follows:

My name is Frederick K. Page, age 51. I reside near Cobham. I own an adjoining place to Mr. Chaloner's, the plaintiff in this case. My residence from his is about 500 yards, a quarter of a mile, north from his house. Just across the road from his house. I own that place. I owned that place in 1896 and 1897, when Mr. Chaloner went to New York. I was at home when he went to New York and prior to that time. I have been there all my life. I saw Mr. Chaloner quite frequently out riding and driving.

"Q. Did you see him prior to his going to New York?"

Mr. Choate: Same objection.

The Court: Sustained.

108 Mr. Miller: I want to show he was living there at his home at the time they took him away to New York. That it was his home and that they so all understood it. On the question of residence.

The Court: I sustain the objection.

Mr. Miller: An exception.

I can state whether Mr. John Armstrong Chaloner had ever voted in Virginia. I think he voted in 1902. He registered under the new constitution and voted for Hay, the candidate for Congress. I happen to know that because I was Chairman of the Registration Board. I knew that he voted in Virginia. I am quite positive it was 1902, or possibly '3. I know of my own knowledge where he lived in 1896 and up to February, 1897. He lived at Cobham, Albemarle County, Virginia. He lived there constantly, except for occasional trips or visits away.

Mr. Miller: Now, if your Honor please, I want to offer in evidence again—I am trying to avoid reading all of these documents—the depositions which have been taken in this case, in which both sides have been represented and which have been opened or published, so to speak, by order of this Court, of John Armstrong Chaloner and all of the others named, John B. Dickinson, Charles E. Dickinson, Lewis Block, John Penn Morris, F. M. Randolph, George W. Macon, George T. Munday, William C. Webb, C. R. Garner, William W. Johnson, William Kennie, A. D. Payne, A. G. Bell, Dr. Mann Page, E. O. McCabe, Frederick K. Page, J. A. Chisholm, L. C. Watts, Thomas W. Page, Micajah Woods, John Armstrong Chaloner,

109 Amelie Rives Troubetzkoy and Robert B. Shackleford.

The Court: Do you offer them as tending to show that Mr. Chaloner is sane?

Mr. Miller: Yes, among other things. The purpose for which I am going to offer all these depositions is to show that the proceedings of 1897 and 1899 in New York are void for, first, lack of juris-

diction, and on account of conspiracy and fraud; second, want of due process of law as having been sick, too sick to attend the 1899 proceedings and the proceedings being had there in absentia; third, to prove his sanity and competency at all times as applying to this case, and for that purpose I am going to offer all of these depositions without undertaking to read them unless these gentlemen want me to do it. Will that be satisfactory to these gentlemen?

The Court: They haven't objected.

Mr. Milburn: Certainly I do, to the tender of all of these depositions in evidence in bulk on a general statement of that kind to show that these proceedings are void for this reason and the other reason which he assigns there, on the ground that it is not proper. If he has got evidence on specific concrete subjects then we can pass on that, but to offer 2,500 of 3,000 pages of testimony and say, "I offer this to show that these proceedings are this, that, or the other—I never knew of such a thing in my life.

Mr. Miller: They will speak for themselves, and I am only trying to avoid reading these depositions.

The Court: Why don't you do it in the way it is ordinarily done. You offer to prove that the man is sane?

110 Mr. Miller: Yes.

The Court: Now, I say I will admit no evidence on that subject. You take your exception. You offer to prove that he was declared sane by this Court in Virginia?

Mr. Miller: Yes.

The Court: I refuse to take any evidence on that subject, as immaterial, and you take your exception. Now, is there any other specific point you offer to prove?

Mr. Miller: I offer all the depositions of these witnesses to prove the lack of jurisdiction and conspiracy and fraud, and, second, the want of due process of law in these proceedings, for the reasons I have already stated, and to prove his sanity and competency.

The Court: If you offer depositions then they must be offered in the way, if they object, which is the proper way. You cannot dump volumes and volumes of testimony into the case if the other side does not wish to have it introduced in that way. They have a right to look at each question and see whether they will make objections, and if you persist in offering the depositions, why, apparently we will have to sit here for a week or two. You will obtain exactly the same result if you would make it in the shape of an offer to prove, instead of offering the depositions, I think.

Mr. Miller: Well, I offer then to prove by these witnesses, or, if your Honor objects, I will leave out the words "by these witnesses," and offer to prove by evidence the lack of jurisdiction.

The Court: I shall allow you to put in any evidence. I
111 was not excluding any evidence tending to prove lack of jurisdiction. If you have any evidence on that point, produce it.

Mr. Miller: Then I offer evidence to show that the plaintiff here was at all times during these proceedings a citizen of the State of Virginia, and that this Court had no jurisdiction over him, and

that he was lured here for the purpose of getting him within the jurisdiction of this Court for the purpose afterwards carried out under the decrees.

The Court: I say I will take no evidence in support of those facts and you take an exception.

Mr. Miller: I except. I offer evidence to show want of due process of law.

The Court: That appears on the face of the record, doesn't it?

Mr. Miller: In addition I offer to prove otherwise than by the face of the record, and to prove by witnesses that at the time the so-called 1899 Sheriff's jury proceedings were had in New York City, the plaintiff here, who was the subject matter of that inquiry, was unable through physical disability to attend those proceedings; therefore, that they were had in absentia and that there was no real contest and that there was a fraud.

The Court: I will take no evidence in support of those allegations and you take an exception.

Mr. Miller: Exception.

I offer to introduce evidence proving that at the time he was committed in 1897, and at all times prior thereto and ever since he has been perfectly sane and competent.

The Court: I decline to accept any evidence on that subject. I shall rule out any evidence on that subject.

112 Mr. Miller: I except.

I offer in evidence particularly a letter written by John Armstrong Chaloner, the plaintiff in this case, to the Hon. Micajah Woods, dated, "Society of the New York Hospital, White Plains, July 3, 1897," in the handwriting as I expect to show of the plaintiff here, John Armstrong Chaloner, several months after his commitment, as being insane, to show under the Runk case, a decision of the Supreme Court of the United States, that by his own written documents at the time he was committed, he was a perfectly sane man.

Mr. Milburn: I object.

The Court: I sustain the objection.

Mr. Milburn: And also on the question of his intention as to his residence in the state of Virginia.

The Court: I sustain the objection.

Mr. Miller: I except to both rulings. I understand there is no objection raised here as to the manner of proof of this letter?

(Printed at page 305.)

Mr. Choate: We have your assurance that this is the letter of John Armstrong Chaloner, and that it was sent by him from Bloomingdale and received by Micajah Woods in the latter part of 1897?

Mr. Miller: Yes, sir.

Mr. Choate: We accept your assurance and stipulate to that effect, so that our objection is not on those grounds.

Mr. Miller: You object as incompetent, irrelevant and immaterial?

Mr. Choate: That it is irrelevant and immaterial.

113 Deposition of the Hon. MICAJAH WOODS, taken at Albemarle, Va., a witness on behalf of the plaintiff, read on behalf of the plaintiff, as follows:

My name is Micajah Woods, 64 years old. I reside in Charlottesville, Va. I am a lawyer by profession. I came to the bar in the Fall of 1868, 40 years ago. I have been continually in the active practice of law since that time. I have been Commonwealth's Attorney for the County of Albemarle, Virginia ever since December, 1870. My present term does not expire for three years. I am the President of the Virginia State Bar Association for this current year, 1908-9. I practice in the Circuit Courts of Virginia, a good many of them; I practice also in the Supreme Court of the State, and also practice in the Federal Court of the State. I think I have known the plaintiff, Mr. Chaloner, for 12 or 15 years. I knew him prior to February 13, 1897. I received a letter from the plaintiff in about October, 1897. The letter was brought to me by a New York lawyer by the name of Phillip, Mr. Phillip.

I knew the handwriting of the plaintiff in this case, Mr. John Armstrong Chaloner. I recognized the letter that I received at that time as the handwriting of Mr. John Armstrong Chaloner.

(Witness examines letter and states:) That is the letter that I received.

"Counsel for Plaintiff: I now file a letter, dated July 3rd, 1897,"—

Mr. Milburn: That is excluded.

Mr. Miller: Surely I am entitled to read the stipulation. (Reading:)

"It is stipulated that a copy of the above letter may be at-
114 tached in place of the original and the original withdrawn; the original, however, to be produced by counsel for the plaintiff upon the trial of this action."

Mr. Miller: Which we have done. That means that letter. The same stipulation is also made as to the other letters offered in evidence.

The Witness: I identify this letter as the letter I received in October, 1897. Brought me by Mr. Phillip from Mr. Chaloner.

"Q. Did you represent the plaintiff as attorney in the proceedings inquiring into the sanity of John Armstrong Chaloner, instituted in Albemarle County, Virginia, by C. Ruffin Randolph, on Sept. 20, 1901, which case was decided on Nov. 6, 1901?

Mr. Choate: That clearly is irrelevant under your Honor's ruling?

The Court: Yes, I sustain the objection.

Mr. Miller: Of course I except to your Honor's ruling, and at this point I offer again that record from Virginia. My purpose in doing this is to get on the record here in regular order the offer of that Virginia record which your Honor has ruled out, to which I except. I ask that it be marked for identification.

The Court: Mark it, Mr. Clerk.

Virginia record marked Plaintiff's Exhibit 7 of this date for identification.

(See Stipulation, page 301.)

"Q. Under what procedure and what law did C. Ruffin Randolph file his application against the plaintiff in the Albemarle
115 County, Virginia, proceedings in 1901?"

Same objection; objection sustained; exception to plaintiff.

Mr. Miller: I want to offer that portion of the letter to Major Micajah Woods which refers to the residence of the plaintiff.

The Court: If there is such a portion there I think I will take that.

Mr. Miller (reading):

"There can be no doubt about my residence being in Virginia, for in 1895 I went to the Commissioner of Taxes' office in the Stewart Building, corner Broadway and Chambers Street, and myself wrote, at his request, in the Tax Book a full description of my residence. It is, of course, there yet. It is to the effect that I was interested in a law firm in New York, but that I did not personally practice law in New York, as the business I had charge of was a manufacturing one in Roanoke Rapids, North Carolina, and that my home, 'The Merry Mills' where I lived, was at Cobham, Virginia. The object of the above visit was to fix the amount of my personal tax in New York. The amount fixed was $2500 (twenty-five hundred dollars). This took place in 1895, and neither the amount nor my address has since been changed."

FRANCIS LEE THURMAN, called as a witness on behalf of the plaintiff, being duly sworn, testifies as follows:

Direct examination by Mr. Miller:

My name is Dr. Francis Lee Thurman. I live at Keswick,
116 Virginia, in Albemarle County. I am a doctor and have been practicing medicine since 1894. I am a graduate of the University of Virginia. I know John Armstrong Chaloner, the plaintiff in this case. I am his family physician. As to his present physical condition and his ability to be at this trial, he is suffering now with some trouble with his spine, which seems to have been of considerable duration. He has simply a spinal irritation in the lower spinal region which affects a considerable area on each side of his spine. It seems to be a neuralgic condition and evidently gives him a good deal of pain, and after any trying ordeal, why he has to take a considerable rest to recuperate his condition. I have examined him recently. I advised him that it would be dangerous for him to appear here from physical reasons. Mr. Chaloner resides very near me. Six miles from my office.

Mr. Miller: I offer in evidence the inventories and the accounts of Mr. Sherman, the Trustee, in order to arrive at what has been received by him.

Mr. Milburn: I suppose they will be satisfied in this action as they have seen fit to bring this action, to confine it to the property at the time the suit was brought.

Mr. Miller: I offer in evidence at this point, copy of the accounting of Stanford White, to John Armstrong Chaloner, which forms a part of the papers in this report.

Objected to; objection sustained; exception to plaintiff.

Copy of inventory and account of Thomas T. Sherman as committee of the property of John Armstrong Chanler, dated and
117 sworn to December 1, 1903, and filed in the office of the Clerk of the County of New York the same day, received in evidence and marked Plaintiff's Exhibit 8.

Copy of statement of account of Stanford White as attorney in fact and custodian of the property of John Armstrong Chanler, from March 4, 1897, to July 6, 1899, marked for identification, Plaintiff's Exhibit 9.

Copy of inventory and account of Thomas T. Sherman as committee of the property of John Armstrong Chanler, dated and sworn to January 31, 1905, and filed in the office of the Clerk of the County of New York the same day, received in evidence and marked Plaintiff's Exhibit 10.

Mr. Miller: I ask for the account of Mr. Prescott Hall Butler showing what he turned over to Mr. Sherman.

Mr. Choate: The only accounts which we have from the point of view of Prescott Hall Butler receipts is an account which was rendered on behalf of his Executor in an accounting action in which his account was settled long after this. I don't think it can be material here.

Mr. Miller: If it covers what he received, I think it is material.

THOMAS T. SHERMAN, called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

Direct examination by Mr. Miller:

I was served with a subpœna duces tecum in this case. To produce, I think, the copies of account. This paper I hold in my hand
is an account or a report on this estate. It purports to be the
118 account of the Executors of Prescott Hall Butler, deceased, to the Supreme Court, rendered in an action in which I, individually and as committee of the person and property of John Armstrong Chanler, an incompetent person, was plaintiff, and John Armstrong Chanler, an incompetent person, Winthrop Astor Chanler, Elizabeth W. Chapman, Lewis S. Chanler, Margaret Livingston Chanler and Cornelia S. Butler, Charles H. Tweed and Allen W. Evarts, as Executors of will of Prescott Hall Butler, deceased, were defendants, and it is dated May 31, 1906, and it is signed by these Executors, but it is in typewriting, and it has several pencil notes upon it, which I will say were evidently made for the purpose of having something else copied from it. These pencil notes are not properly copies of the original account. They do not appear upon the accounting that I know of. They are not in my handwriting, and I think they were probably put in to make up for some other account; not of any other estate.

Q. Well, is there any objection to that going in, Mr. Sherman?

A. Without the pencil marks I see no objection. I believe it to be a correct copy of the original account, which I think is filed in that suit.

Mr. Miller: I offer that in evidence without the pencil marks.

Mr. Choate: We have no objection so far as it tends to show the property in the hands of Mr. Sherman at the time.

Above-mentioned account received in evidence and marked Plaintiff's Exhibit 11.

119 Q. What do you know about this document, Mr. Sherman?

Mr. Milburn: What is that?

Mr. Miller: The Stanford White report.

Mr. Milburn: We object.

The Court: Sustained.

Q. Is it a report showing what came into your hands?

A. I think not.

Mr. Miller: Your Honor has ruled, and I except. The amount of interest which we have had figured on the amount sued for here, subject to correction, of course, up to March 1, 1912, is $125,002.35. Will that be conceded, subject to correction?

Mr. Milburn: What sum is that? I am willing to admit that so much money at a certain per cent. for a certain length of time amounts to that much. That is all you want.

Mr. Miller: Yes, and that this is the amount sued for in the complaint; that the amount sued for in the complaint at 6 per cent. down to March 1, 1912, is so much.

The Court: Do you rest?

Mr. Miller: I rest, as to the evidence.

Mr. Choate: If your Honor please, then we move for the direction of a verdict for the defendant on the ground that the plaintiff has wholly failed to prove the cause of action alleged in the complaint, or any other cause of action, and in particular on the ground that the evidence shows that the defendant was the duly appointed committee of the plaintiff appointed by judgment of a competent court of general jurisdiction, having jurisdiction over the plaintiff and of the subject matter.

Mr. Miller: I oppose that motion, and want to be heard.

120 [Argument by Mr. Miller, for the plaintiff, in opposition to the defendant's motion for the direction of a verdict in favor of the defendant.]

The Court: There are three grounds, as I understand it, upon which it is claimed that this judgment was without jurisdiction, first, that the Commissioners were not sworn at the time the notice was signed. There is no question but that in this case all three of the Commissioners were sworn. In one of the cases that you have cited here, of Porter, or Bischoff, only two of the Commissioners were sworn. The other one never was sworn at all. In this case all the Commissioners were sworn before the notice was served. All that the alleged defect amounts to is that it was signed by the three Commissioners before they were sworn, but they were sworn before it was served upon anybody, and in my opinion, that meets the case.

The other point is that this proceeding took place out of the judicial district where the lunatic resided. The evidence in this

case shows that he resided in another State, Virginia, and that he was not a resident of New York, and the section of the Code provides that the petition must be presented at a Special Term held within the judicial district where the person alleged to be incompetent resides, or if he is not a resident of the State, where some of his property is situated. Now, it appears in the evidence that a great amount of his property was here in New York. It was more convenient, probably for all of the parties to bring the proceedings here, and it seems to me it is perfectly regular in that respect.

Mr. Miller: There is no evidence that we do own property in the other judicial departments.

121 The Court: This proceeding is brought here. The great bulk of his property is here, and the statute says if he does not reside in the State it may be brought where his property is situated.

Now, the other ground is, as I understand, that certain provisions of the Code are unconstitutional, because they permit a man to be committed to an insane asylum without notice. That refers to the proceeding that took place in his original commitment in 1897. Whether they were valid or invalid, in my opinion, is entirely immaterial in this case. I think there are numerous New York decisions to the effect that that provision of the Act is constitutional. Everybody knows, in fact, that there are plenty of instances arising all the time where a lunatic is so dangerous that immediate confinement is necessary. The statute provides that it may take place upon the certificate of two physicians, and the order of a Supreme Court Judge, and at all events in the absence of a decision by the Courts of this State to the e[illegible] that the Act was unconstitutional, I should hesitate to so hold. [illegible] if that question arose in this case I should hesitate to declare [illegible] unconstitutional. But in my opinion the fact that Mr [illegible]s taken in 1897 to the insane asylum under an ord[illegible]ut previous notice, has no effect upon the validity [illegible]ngs taken under the inquisition. These two cases tha[illegible] been cited are both cases of a direct application to the Court in w[illegible]h the adjudication was made, one a motion by the alleged lunatic who had been found to be one, to set the proceedings aside. That was a motion made directly to the Court that made the order confirming the inquisition. From the decision upon

122 it there was an appeal to the Appellate Division. The other is a direct appeal from the decision below to the Appellate Division. That is perfectly proper practice. Mr. Chaloner could have appealed from this decision. He could have made a motion to the Supreme Court to vacate the order if there was anything irregular about it. That is a very different proposition from going into another court and endeavoring to have that Court, by its judgment, hold that the judgment of another Court having full jurisdiction is erroneous. That is never permitted under any ordinary circumstances. The adjudication that has taken place in the Court having jurisdiction is conclusive upon all parties.

In my opinion there has been no case made out here at all to authorize a recovery.

The proceedings brought, which resulted in the — and having Mr. Butler appointed his committee, and the subsequent proceedings to appoint Mr. Sherman, seem to me to have been entirely lawful. If Mr. Chaloner in fact never was insane, or in fact, was insane, which must be presumed from the judgment, and has now recovered his sanity, which may occur in any case, why he has a perfect remedy to apply to the New York Supreme Court, which has his property in its custody, by one of its officers, to supersede the adjudication and restore his property to him. No other Court in my judgment, has any authority to do that, and therefore, in view of these circumstances, I direct a verdict for the defendant.

Mr. Miller: Your Honor will note an exception?

The Court: Certainly.

123 Mr. Miller: And allow the usual time to make up an appeal?

The Court: Certainly, sixty days, and a stay of execution of sixty days to make a case. There will be no execution except as to costs. I suppose the defendant is entitled to costs.

The Court: I direct a verdict in this case in favor of the defendant. The Clerk will so enter it in the minutes. That is all, gentlemen.

The jury, by direction of the Court, returned a verdict for the defendant.

The foregoing, together with the exhibits annexed thereto, constitute the testimony and statement of all the evidence introduced and offered upon the trial of this cause.

124 The plaintiff-in-error prays that the foregoing, its bill of exceptions, may be allowed, settled, and ordered on file.

WILLIAM D. REED,
Attorney for Plaintiff-in-Error.

The plaintiff-in-error's bill of exceptions on appeal in the above-entitled action is hereby settled in the form of the foregoing as between the parties thereto, and it is stipulated that the same may be settled in the form of the foregoing, by the judge before whom said action was tried.

Dated, New York, August 4, 1913.

WILLIAM D. REED,
Attorney for Plaintiff-in-Error.
EVARTS, CHOATE & SHERMAN,
Attorneys for Defendant-in-Error.

Upon the above stipulation the foregoing bill of exceptions is settled and allowed and ordered to be filed.

Dated, New York, October 15, 1913.

GEO. C. HOLT, *J.*

125 PLAINTIFF'S EXHIBIT 1.

Osborne & Hess, 27 William Street.

James W. Osborne.
Otto T. Hess.

Cable Address "Osborness."

Thomas W. Churchill.
William D. Reed.
Ernest W. Marlow.
James J. Fitzgerald.

NEW YORK, April 4th, 1904.

DEAR SIR: On behalf of our client, John Armstrong Chanler, we write to demand of you, pursuant to instructions from him, the delivery to us of all moneys, securities, title deeds and other property, principal and income, which you are withholding from him under color of certain alleged proceedings in which we are informed you claim to have been appointed a so-called committee. The failure on your part to respond to our demand at once will be construed on our part as a refusal to comply with his demand.

Yours very truly,

OSBORNE & HESS,
Attorneys for John Armstrong Chanler.

To Thomas T. Sherman, Esq., 52 Wall Street, New York City.

126 PLAINTIFF'S EXHIBIT 2.

Printed in full in bill of exceptions at page 44.

PLAINTIFF'S EXHIBIT 3.

No. 6.

The People of the State of New York, by the Grace of God Free and Independent, to all to whom these presents shall come or may concern, Greeting:

Know ye, that we having examined the records and files in the office of the Clerk of the County of New York, and Clerk of the Supreme Court of said State for said County, do find a certain record, there remaining, in the words and figures following, to-wit:

[SEAL.]

127 At a Special Term of the Supreme Court, Part 2d, Held in and for the City and County of New York, at the County Court-house, on the 9th Day of May, 1899.

Present: Hon. Leonard A. Giegerich, Justice.

Supreme Court, County of New York.

In the Matter of JOHN ARMSTRONG CHANLER, an Alleged Incompetent Person.

On reading the annexed verified petition, dated the 8th day of May, 1899, and the affidavits and notice of motion thereto annexed, and on motion of Jay & Candler, attorneys for the petitioners, Winthrop Chanler and Lewis S. Chanler,

Ordered, that notice of the application prayed for in said petition be given in the following manner: A copy of this order and of the said petition, affidavits and notice of motion shall be served upon the said John Armstrong Chanler, the alleged incompetent person, personally on or before the 19th day of May, 1899, by delivering the same to him in person, and that a copy of the same papers be served upon Margaret Chanler and Alida Emmet, sisters of the said alleged incompetent person, personally, by
128 delivering the same to them personally on or before the 10th day of May, 1899, and that three copies of the same papers be served upon William A. Chanler, Robert W. Chanler and Elizabeth W. Chapman, two brothers and a sister of the said alleged incompetent person, by mailing a copy addressed to each respectively, at No. 16 Exchange Place, in the City of New York, securely closed in a wrapper with the postage thereon prepaid.

Dated, 9th day of May, 1899.

Enter. L. A. G., *J. S. C.*

Supreme Court, New York County.

In the Matter of JOHN ARMSTRONG CHANLER, an Alleged Incompetent Person.

To John Armstrong Chanler, Bloomingdale Insane Asylum, White Plains, Westchester County, New York; William A. Chanler, 16 Echange Place, New York City; Robert W. Chanler, 16 Exchange Place, New York City; Margaret Chanler, 317 West 74th Street, New York City; Elizabeth W. Chapman, 16 Exchange
129 Place, New York City; Alida Emmet, 317 West 74th Street, New York City:

Please take notice that upon the annexed petition and annexed affidavits, a motion will be made at a Special Term, Part I, of the Supreme Court, State of New York, held at the County Court House in the Borough of Manhattan, in the City and County of New York, on the 19th day of May, 1899, at ten and a

half o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order that the prayer of the said petition be granted and for such further and other order as shall be proper in the premises.

Dated the 9th day of May, 1899.

JAY & CANDLER,
Att'ys for Petitioners.

Office and Post Office Address, No. 48 Wall Street, New York.

Supreme Court, County of New York.

In the Matter of JOHN ARMSTRONG CHANLER, an Alleged Incompetent Person.

To the Honorable the Supreme Court of the State of New York:

The petition of Winthrop Chanler and Lewis S. Chanler
130 of the Borough of Manhattan, City, County and State of New York, respectfully shows:

First. Your petitioners, Winthrop Chanler and Lewis S. Chanler are brothers of John Armstrong Chanler above named, that the said John Armstrong Chanler formerly resided at the Kensington Hotel Fifth Avenue and 15th Street, in the Borough of Manhattan, City of New York, and that on the 10th day of March 1897, the said John Armstrong Chanler was adjudged insane and committed to the Bloomingdale Insane Asylum at White Plains, New York, an institution for the custody and treatment of the insane, by Hon. Henry A. Gildersleeve, one of the Justices of this Honorable Court the said Justice then sitting at a Special Term of this Court, held in and for the City and County of New York; and that since the said 10th day of March, 1897, and some time previous thereto, the said John Armstrong Chanler was, and has ever since been, of unsound mind, and so far deprived of his reason and understanding as to be altogether unfit and unable to govern himself or manage his affairs, and has been at times frequently violent and dangerous to himself and those about him; and that he is, within the meaning of Title 6, Chapter 17, of the Code of Civil Procedure, an incompetent person.

Second. That the said John Armstrong Chanler is now unmarried having been divorced from his wife, and that the names and residences of his next of kin and heirs at law — so far as the same are known to your petitioners, or can with reasonable diligence be ascertained by them as follows: Your petitioner Winthrop Chanler who is a brother of said John Armstrong Chanler, your peti-
131 tioner Lewis S. Chanler, who is a brother of the said John Armstrong Chanler, Margaret Chanler, a sister who resides at No. 314 West 7th Street, New York City, William A. Chanler a brother, who is now traveling in Europe, and whose post office address is No. 16 Exchange Place, in the Borough of Manhattan City of New York; Robert W. Chanler, a brother, who is at present sojourning in Europe and whose post office address is No. 16 Ex

change Place, Borough of Manhattan, City of New York; Elizabeth W. Chapman, wife of John J. Chapman, a sister who is now sojourning in Europe, and whose post office address is No. 16 Exchange Place, in the City of New York; Alida Emmet, wife of Charles T. Emmet, a sister, who resides at No. 317 West 74th Street, in the Borough of Manhattan, City of New York.

Third. That the probable value of the property possessed and owned by the said John Armstrong Chanler, the alleged incompetent person, and also the property belonging to him which has been conveyed during his alleged incompetency, and to whom, and its value, and what consideration was paid for it, if any, or was agreed to be paid, are as follows:

The said John Armstrong Chanler is the owner of personal and real property, situated in the Borough of Manhattan, City of New York, State of New York, and elsewhere, of the probable value of one hundred and fifty thousand dollars ($150,000); and in addition to that he is entitled to receive from the Trustees under the will of his father, Winthrop Chanler, an annual income of about $5,000, during the term of his natural life; that the property
132 conveyed by the said John Armstrong Chanler during his alleged incompetency is as follows: The real estate situated in the block bounded by 10th and 11th Avenues and 14th and 15th Street, with the bulkhead and dock rights on the westerly side of 11th Avenue, between 14th and 15th Streets, in the Borough of Manhattan, City of New York, in which said real estate the said John Armstrong Chanler had an undivided one-eighth interest, was conveyed by him for the consideration of $100,000 to his brothers and sisters hereinabove mentioned, except that in the case of the said Robert W. Chanler, a brother of the said John Armstrong Chanler, his, the said Robert's interest was conveyed to the United States Trust Company as Trustee for him, and that at the time of such conveyance a mortgage with accrued interest thereon amounting to $52,124, which was a lien on the share of the said John Armstrong Chanler, was paid and the balancee of the purchase price, namely, the sum of $47,876, was received by the said John Armstrong Chanler in cash, no previous application having been made for this relief.

Wherefore your petitioners pray that Stanford White, or some other suitable and proper person, may be, by the order and the judgment of this Court, appointed a Committee of the person and of the property and estate of the said John Armstrong Chanler, as an incompetent person, and that your petitioners may
133 have such further and other order and relief as may be just and proper in the premises.

Dated, New York, the 8th day of May, 1899.

WINTHROP CHANLER,
By LEWIS S. CHANLER,
LEWIS S. CHANLER,
Petitioners.

JAY & CANDLER,
Attorneys for Petitioners,
No. 48 Wall Street, New York.

STATE OF NEW YORK,
County of New York, ss:

Lewis S. Chanler, being duly sworn, deposes and says that he is one of the petitioners above named; that he has read the foregoing petition and knows the contents thereof, and that the matters of fact therein stated are true.

LEWIS S. CHANLER.

Sworn to before me this 8th day of May, 1899.

JOHN H. BOGARDUS,
Notary Public, Kings County.

Certificate filed in New York County.

VILLAGE OF WHITE PLAINS,
County of Westchester, State of New York, ss:

Samuel B. Lyon, being duly sworn, deposes and says that he is a physician, and is the Medical Superintendent of Bloomingdale Asylum, White Plains, a hospital for the care and treatment 134 of the insane, and has been such Superintendent for the past eight years.

That he knows and is personally acquainted with John Armstrong Chanler, who is a patient in the above named hospital. That he believes the said John Armstrong Chanler to be insane and unable to manage himself or his affairs, and the grounds of his belief are as follows:

That since the patient's admission to Bloomingdale, he has had delusions that conspiracies existed against his life and happiness; he has passed his nights in watching; has often declared his belief in his own pre-eminent talents as a lawyer, pugilist, poet, etc.; that while really a very bright man naturally, he is under the delusion that his mental powers are almost supernatural, and that his personality has undergone a change, and that he now has a very high mission to fulfill toward the world. His disease appears to pursue the typical course of what is known as systematized delusional insanity, beginning with suspicions of persecution by enemies for a purpose, and later developing expansive ideas of his own personality.

SAMUEL B. LYON.

Sworn to before me this 27th day of April, 1899.

LOUIS D. FERRISS,
Notary Public, Westchester Co., N. Y.

Supreme Court, County of New York.

In the Matter of JOHN ARMSTRONG CHANLER, an Alleged Incompetent Person.

STATE OF NEW YORK,
County of New York, ss:

M. Allen Starr, being duly sworn, says that he resides at No. 5 West 54th Street, in the Borough of Manhattan, City of New York, and is a graduate of an incorporated medical college and a qualified medical examiner in lunacy, and has a certificate of his qualification as such examiner, and that such certificate, or a certified copy thereof, is on file in the office of the State Commission of Lunacy.

Deponent further says that on the 10th day of March, 1897, he together with Eugene Fuller, M. D., personally examined with care and diligence the said John Armstrong Chanler, who then was residing at the Kensington Hotel, in the City of New York, and as a result of such examination — was found that the said John Armstrong Chanler was insane and a proper subject for custody and treatment in some institution for the insane as an insane person, under the provisions of the Statute of the State of New York.

136 Deponent further says that his opinion, formed upon such examination as to the insanity of the said John Armstrong Chanler, was based upon the following facts: The said John Armstrong Chanler stated to me that the color of his eyes, shape of his nose and ears, had been changed so that he resembled Napoleon; that this was done by the spirit which acted upon and through him; that he was inspired to lead a holy war in Europe; that his coming had been foretold in the Book of Revelation; that the said John Armstrong Chanler talked volubly about his inspiration, frequently went into a trance-like state, in which he talked French, and on returning to English declared that it was not he, but the spirit, which had been speaking; showed the scar of a burn on his hand made by carrying live coal at the command of the spirit; pointed out certain lines in a picture of the Sphinx which he claimed were his initials, put there in prophecy of his coming; said he saw his name carved in the mantel; said the spirit commanded him by its voice which he heard, and said he was immortal, and that nothing could harm him, thus excusing himself for exposure to cold, neglecting ordinary clothing, and going in his bare feet.

Deponent further says that he learned from the valet of the said John Armstrong Chanler, who stated that he had been with him for over fourteen years, that the delusion of said Chanler being inspired had led him to do many insane acts, that it had led him to become suspicious of his friends, and that consequently

137 said Chanler had secluded himself, and been neglecting his food, and had become thin and anæmic.

M. ALLEN STARR, M. D.,
Prof. of Nervous Diseases,
College Phys. & Surg., New York.

Sworn to before me this 5th day of May, 1899.

WILLIAM WHITE WHITTAKER,
Notary Public, Kings County.

Certificate filed in New York County.

Supreme Court, New York County.

In the Matter of JOHN ARMSTRONG CHANLER, an Alleged Incompetent Person.

STATE OF NEW YORK,
County of New York, ss:

Austin Flint, being duly sworn, deposes and says, that he resides at No. 60 East 34th Street, in the Borough of Manhattan, and the City of New York, and is a practicing physician, and has practiced his profession in the said City for upwards of twenty years past, and has made a specialty of mental diseases, and has been a duly qualified examiner in lunacy for a number of years.

138 Deponent further says that, together with Dr. Carlos F. MacDonald, he made a personal examination of John Armstrong Chanler, a patient in the Bloomingdale Asylum, for the purpose of determining his mental condition; that the first examination was made on the 16th day of March, 1898, when deponent, together with the said Dr. Carlos F. MacDonald, spent two hours in conversation with said Chanler in his apartments at Bloomingdale; that at the time of said visit the deponent carefully examined the said John Armstrong Chanler, who immediately began to explain his case to deponent and the said Dr. MacDonald, and said, among other things, that he was the victim of a gigantic conspiracy on the part of his relatives, who were jealous of his great mental and physical superiority to them; the other conspirators being prominent citizens of the City of New York, who were named by the said John Armstrong Chanler, including prominent lawyers and Judges of the said City; that he also said that they had subsidized the State and National Governments, which were arrayed against him; that his case was thoroughly prepared, and it would be taken up by the Courts just as soon as the Spanish-American war scare was over; that he would expose a very prominent person, whom he named, as bogus prestige, and in this he would be "backed up by six million, five hundred thousand Silverites." He called our attention to large files of the New York World and other papers, which were piled up on the floor in one corner of his bedroom, which he said contained his case, and which he had edited from day to day as published, "blue penciling," all the lines, and that he would show them all up in due time. He also said

139 that he was an expert in the art of boxing, in pool-playing and in pistol shooting; that he could hit with the pistol two out of three apples thrown into the air, every time; also that he was an expert in mental strain and in mental impressions, depressions and exaltation, and that he excelled in mental and physical power;

that he was a mental gladiator, a John L. Sullivan in debate; that in controversy or debate he not only had never failed to hold his own, but had invariably knocked out his opponent. This great mental and physical power, he said, was due to his peculiar diet of bread and potatoes, with some other vegetable and fruit; and made other foolish and absurd statements. That the said Chanler, during the said interview talked very rapidly, was exceedingly voluble, demonstrative, effusive and vociferous, and at times vulgar and profane. At the end of the conversation, which he terminated very abruptly, he appeared to be greatly exhausted as a result of the great mental excitement and strain he had been under for the period of two hours. He dismissed deponent and said Dr. MacDonald after exacting from deponent a promise to return in the near future and finish the conversation.

Deponent further says that in pursuance to the said promise, and in order to make a further examination, deponent, together with the said Carlos F. MacDonald, again visited the said John Armstrong Chanler in his apartment at Bloomingdale on April 9th, 1898; that at the said time, the said Chanler was not completely dressed, and acted in a strange manner; that, among other things, he took from under the mattress of his bed a large volume of manu-
140 script, to which he called our attention, stating that it was his case, and that no one but himself knew its contents and that he intended to read it on the witness stand when his case came up in Court. He was as excited, effusive, and vociferous in his manner as on the first visit. At times he shouted at the top of his voice, saying, amongst other things, that his system had gradually undergone a change until he had become a magnet and his stomach a Leyden jar. As proof of this magnetic power, he showed us a much tarnished silver box, which he said he had carried in his pocket for more than two years without its having undergone the slightest change in color, until recently, that is, since he had become a magnet, when it suddenly became oxidized, "as you now see it." This change in color he said could not occur if the box were carried by any one else.

Dependent further says that at said time, he made a physical examination of the said John Armstrong Chanler, which showed that his pulse was 110, his hands cold and tremulous, pupils normal, tongue coated and tremulous, and there was also a marked tremor of the labial muscles and of the eyelids when the eyes were closed. The reflexes were much diminished; there was no sign of ataxia or want of co-ordinating power; he stated that he slept well, that his bowels were regular, and that he was in perfect mental and physical health.

Deponent further says, from the examination so made, and from reading the history of the case in the hospital case book, he was at that time clearly of the opinion that the said John Armstrong
141 Chanler was insane, and a proper subject for attention and treatment as such in an institution for the insane; that the form of insanity from which he was suffering was that known as paranoia, or chronic delusional insanity, which is well understood

and which is characterized by morbidly extravagant ideas of self-importance and grandeur, together with delusions of conspiracy and persecution, and eventually transformation of the personality of the individual.

Deponent further says that subsequently, and on the 20th day of April, 1899, deponent, together with the said Dr. Carlos F. MacDonald, made a further examination of the said John Armstrong Chanler, which lasted from about 6:30 to eight o'clock in the evening of that day; and on that occasion found the said John Armstrong Chanler in his bed and in what seemed to be his usual condition. At first he did not complain of any physical ailment, but in reply to questions he said that on April 14th, 1899, he was suddenly seized with a remarkable sensation in the spine, just above the sacrum, that there was no pain, but the sensation was like the revolution of a buzz saw. He got up and moved freely about the room, and after I had carefully examined his spine I found nothing the matter with it. He was wearing a porous plaster, which he said had given him instant relief. He said his nervous system was breaking down under his incarceration, and that the trouble with the spine started in his head. He said nothing about his spinal trouble except in answer to questions. In the opinion of deponent the said John Armstrong Chanler had no disease of the spine, and the difficulty complained of was a delusion, probably temporary.

Deponent further says that the said John Armstrong
142 Chanler received him most cordially, was as voluble, excited and vehement in his language as in the examination hereinbefore referred to in April, 1898, talked most freely, and seemed to conceal nothing from deponent.

Deponent further says that the abnormal mental condition of the said John Armstrong Chanler is markedly intensified since the first examination, made in the year 1898; that the said John Armstrong Chanler now firmly believes that he is a reincarnation of Napoleon Bonaparte, and that he recited to deponent and the said Dr. Carlos F. MacDonald seven or eight sonnets of his own composition, saying that he had suddenly become the greatest poet of the world's history, excepting only Shakespeare. He went into a trance, at the request of Dr. MacDonald, and gave the most vivid illustrations of the death of Napoleon. He had told deponent and the said MacDonald that he was Napoleon only when in a trance.

Deponent further says that the foregoing are a few instances of a most violent and tragic talk with the said John Armstrong Chanler, which lasted, as aforesaid, over an hour, and that the said talk was accompanied with denunciations of vile conspiracies against him.

Deponent further says that his opinions expressed at the time of the second interview hereinbefore referred to in April, 1898, have been confirmed, and that the said Chanler is now, in his opinion, a hopeless paranoiac, his mental disorder being incurable and progressive.

Sworn to before me this — day of —— 1899.

—— ——.

143 STATE OF NEW YORK
County of New York, ss:

William White Whittaker, being duly sworn, deposes and says that he is a clerk in the office of Jay & Candler the attorneys for the petitioners in the above entitled proceeding. That the foregoing affidavit which was intended to have been verified by Dr. Austin Flint was prepared from statements furnished to the attorneys for the petitioners signed by said Dr. Flint and by Dr. Carlos F. MacDonald and is similar to the affidavit verified by the said Dr. Carlos F. MacDonald, which was prepared from similar statements, and that such affidavit was approved of by Dr. Flint but unfortunately the said Dr. Flint is at present very seriously ill with pneumonia and it is impossible to have him swear to his affidavit at the present time.

WILLIAM WHITE WHITTAKER.

Sworn to before me this 8th day of May, 1899.
JOHN H. BOGARDUS,
Notary Public, Kings County.

Certificate filed in New York County.

144 Supreme Court, New York County.

In the Matter of JOHN ARMSTRONG CHANLER, an Alleged Incompetent Person.

STATE OF NEW YORK,
County of New York, ss:

Carlos F. MacDonald, being duly sworn, says: That he resides at 85 Madison Avenue, Borough of Manhattan, City of New York, and has been a practicing physician for upwards of twenty-five years, and has given special attention to the treatment and condition of the insane; that for many years he was Superintendent of Asylums for Insane in the State of New York, and has had occasion to observe and treat many hundreds of persons who were afflicted with insanity; that he was President of the New York State Commission in Lunacy for more than seven years and has been professor of mental diseases in the Bellevue Hospital Medical College for upwards of fifteen years.

Deponent further says that, together with Dr. Austin Flint, he made a personal examination of John Armstrong Chanler, a patient in the Bloomingdale Asylum, for the purpose of determining his mental condition; that the first examination was made on the 16th day of March, 1898, when deponent, together with the said Dr.
145 Austin Flint, spent two hours in conversation with said Chanler in his apartments at Bloomingdale; that at the time of said visit deponent carefully examined the said John Armstrong Chanler, who immediately began to explain his case to deponent and the said Dr. Flint, and said, among other things,

that he was the victim of a gigantic conspiracy on the part of his relatives, who were jealous of his great mental and physical superiority to them; the other conspirators being prominent citizens of the City of New York, who were named by the said John Armstrong Chanler, including prominent lawyers and Judges of the said City; that he also said that they had subsidized the State and National Governments, which were arrayed against him; that his case was thoroughly prepared, and it would be taken up by the Courts just as soon as the Spanish-American War scare was over; that he would expose a very prominent person, whom he named, as bogus prestige, and in this he would be "backed up by six million, five hundred thousand Silverites." He called our attention to large files of the New York World and other papers, which were piled up on the floor in one corner of his bedroom, which he said contained his case, and which he had edited from day today as published, "blue penciling" all the lines, and that he would show them all up in due time. He also said that he was an expert in the art of boxing, in pool playing and in pistol shooting; that he could hit with the pistol two out of three apples thrown into the air every time; also that he was an expert in mental strain and in mental impressions, depressions and exaltation, and that he excelled in mental and physical power; that he was a mental gladiator, a John L. Sullivan in debate; that in controversy or debate he not only had
146 never failed to hold his own, but had invariably knocked out his opponent. This great mental and physical power, he said, was due to his peculiar diet of bread and potatoes, with some other vegetables and fruit; and made other foolish and absurd statements. That the said Chanler, during the said interview, talked very rapidly, was exceedingly voluble, demonstrative, effusive and vociferous, and at times vulgar and profane. At the end of the conversation, which he terminated very abruptly, he appeared to be greatly exhausted as a result of the great mental excitement and strain he had been under for the period of two hours. He dismissed deponent and said Dr. Flint, after exacting from us a promise to return in the near future and finish the conversation.

Deponent further says that in pursuance to the said promise, and in order to make a further examination, deponent, together with the said Austin Flint, again visited the said John Armstrong Chanler in his apartment at Bloomingdale on April 9th, 1898; that at the said time the said Chanler was not completely dressed, and acted in a strange manner; that, among other things, he took from under the mattress of his bed a large volume of manuscript, to which he called our attention, stating that it was his case, and that no one but himself knew its contents, and that he intended to read it on the witness stand when his case came up in court. He was as excited, effusive, and vociferous in his manner as on the first visit. At times he shouted at the top of his voice, saying among other things, that his system had gradually undergone a change until he had become a magnet and his stomach a Leyden jar. As
147 proof of this magnetic power, he showed us a much tarnished silver box, which he said he had carried in his pocket for

more than two years without its having undergone the slightest change in color, until recently, that is, since he had become a magnet, when it suddenly became oxidized, "as you now see it." This change in color he said could not occur if the box were carried by any one else.

Deponent further says that at said time, he made a physical examination of the said John Armstrong Chanler, which showed that his pulse was 110, his hands cold and tremulous, pupils normal, tongue coated and tremulous, and there was also a marked tremor of the labial muscles and of the eyelids when the eyes were closed. The reflexes were much diminished; there was no sign of ataxia or want of co-ordinating power; he stated that he slept well, that his bowels were regular, and that he was in perfect mental and physical health.

Deponent further says, from the examination so made, and from reading the history of the case in the hospital case book, he was at that time clearly of the opinion that the said John Armstrong Chanler was insane, and a proper subject for attention and treatment as such in an institution for the insane; that the form of insanity, from which he was suffering, was that known as paranoia, or chronic delusional insanity, which is well understood and which is characterized by morbidly extravagant ideas of self-importance and grandeur, together with delusions of conspiracy and persecution, and eventually transformation of the personality of the individual.

148 Deponent further says that subsequently, and on the 20th day of April, 1899, deponent, together with the said Dr. Austin Flint, made a further examination of the said John Armstrong Chanler, which lasted from about 6:30 to eight o'clock in the evening of that day; and on that occasion found the said John Armstrong Chanler in his bed and in what seemed to be his usual condition. At first he did not complain of any physical ailment, but in reply to questions he said that on April 14th, 1899, he was suddenly seized with a remarkable sensation in the spine, just above the sacrum, that there was no pain, but the sensation was like the revolution of a buzz saw. He got up and moved freely about the room. Careful examination of his spine showed that there was nothing the matter with it. He was wearing a porous plaster, which he said had given him instant relief. He said his nervous system was breaking down under his reincarceration, and that the trouble with the spine started in his head. He said nothing about his spinal trouble except in answer to questions. In the opinion of deponent and of the said Dr. Austin Flint the said John Armstrong Chanler had no disease of the spine, and the difficulty complained of was a delusion, probably temporary.

Deponent further says that the said John Armstrong Chanler received him most cordially, was as voluble, excited and vehement in his language as in the examination hereinbefore referred to in April, 1898, talked most freely, and seemed to conceal nothing from deponent.

Deponent further says that the abnormal mental condition of the

said John Armstrong Chanler is markedly intensified since
149 the first examination made in the year 1898; that the said John Armstrong Chanler now firmly believes that he is a reincarnation of Napoleon Bonaparte, and that he recited to deponent and the said Dr. Austin Flint seven or eight sonnets of his own composition, saying that he had suddenly become the greatest poet of the world's history, excepting only Shakespeare. He went into a trance at the request of deponent, and gave the most vivid illustrations of the death of Napoleon. He had told deponent that he was Napoleon only when in the trance.

Deponent further says that the foregoing are a few instances of a most violent and tragic talk with the said John Armstrong Chanler, which lasted as aforesaid, over an hour; and that the said talk was accompanied with denunciations of vile conspiracies against him.

Deponent further says that his opinions expressed at the time of the second interview hereinbefore referred to in April, 1898, have been confirmed, and that the said Chanler is now, in his opinion, a hopeless paranoic, his mental disorder being incurable and progressive.

CARLOS F. MACDONALD.

Sworn to before me this 5th day of May, 1899.

WILLIAM WHITE WHITTAKER,
Notary Public, Kings County.

Certificate filed in New York County.

150 Cover endorsed: Supreme Court, New York County. In the Matter of John Armstrong Chanler, an alleged incompetent person. Order, Notice of motion, petition and affidavits. Jay & Candler, Attorneys for Petitioners, No. 48 Wall Street, New York. Filed and Recorded May 9, 1899.

151 At a Special Term of the Supreme Court, Part 2nd, Held in and for the City and County of New York, at the County Courthouse, on the 9th day of May, 1889.

Present: Hon. Leonard A. Giegerich, Justice.

Supreme Court, County of New York.

In the Matter of JOHN ARMSTRONG CHANLER, an Alleged Incompetent Person.

On reading the annexed verified petition, dated the 8th day of May, 1899, and the affidavits and notice of motion thereto annexed, and on motion of Jay and Candler, attorneys for the petitioners, Winthrop Chanler and Lewis S. Chanler,

Ordered that notice of the application prayed for in the said petition be given in the following manner: A copy of this order and of the said petition, affidavits and notice of motion shall be served

upon the said John Armstrong Chanler, the alleged incompetent person, personally on or before the 19th day of May, 1899, by delivering the same to him in person, and that a copy of the same papers be served upon Margaret Chanler and Alida Emmet, sisters of the said alleged incompetent person, personally, by delivering the same to them personally on or before the 10th day of
152 May, 1899, and that three copies of the same papers be served upon William A. Chanler, Robert W. Chanler and Elizabeth W. Chapman, two brothers and a sister of the said alleged incompetent person, by mailing a copy addressed to each respectively, at No. 16 Exchange Place, in the City of New York, securely closed in a wrapper with the postage thereon prepaid.

Dated 9th day of May, 1899.

Enter,

L. A. G., *J. S. C.*

Supreme Court, New York County.

In the Matter of JOHN ARMSTRONG CHANLER, an Alleged Incompetent Person.

To John Armstrong Chanler, Bloomingdale Insane Asylum, White Plains, Westchester County, New York; William A. Chanler, 16 Exchange Place, New York City; Robert W. Chanler, 16 Exchange Place, New York City; Margaret Chanler, 317 West 74th Street, New York City; Elizabeth W. Chapman, 16 Ex-
153 change Place, New York City; Alida Emmet, 317 West 74th Street, New York City:

Please take notice that upon the annexed petition and annexed affidavits, a motion will be made at a Special Term, Part I, of the Supreme Court, State of New York, held at the County Court House in the Borough of Manhattan, in the City and County of New York, on the 19th day of May, 1899, at ten and a half o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order that the prayer of the said petition be granted and for such further and other order as shall be proper in the premises.

Dated the 9th day of May, 1899.

JAY & CANDLER,
Attorneys for Petitioners.

Office and Post Office Address, No. 48 Wall Street, New York.

Supreme Court, County of New York.

In the Matter of JOHN ARMSTRONG CHANLER, an Alleged Incompetent Person.

To the Honorable the Supreme Court of the State of New York:

The petition of Winthrop Chanler and Lewis S. Chanler, of the Borough of Manhattan, City, County and State of New
154 York, respectfully shows:

First. Your petitioners, Winthrop Chanler and Lewis S. Chanler, are brothers of John Armstrong Chanler above named, that the said John Armstrong Chanler formerly resided at the Kensington Hotel, Fifth Avenue and 15th Street, in the Borough of Manhattan, City of New York, and that on the 10th day of March, 1897, the said John Armstrong Chanler was adjudged insane and committed to the Bloomingdale Insane Asylum at White Plains, New York, an institution for the custody and treatment of the insane, by Hon. Henry A. Gildersleeve, one of the Justices of this Honorable Court, the said Justice then sitting at a Special Term of this Court, held in and for the City and County of New York; and that since the said 10th day of March, 1897, and some time previous thereto, the said John Armstrong Chanler was, and has ever since been, of unsound mind, and so far deprived of his reason and understanding as to be altogether unfit and unable to govern himself or manage his affairs, and has been at times frequently violent and dangerous to himself and those about him; and that he is, within the meaning of Title 6, Chapter 17, of the Code of Civil Procedure, an incompetent person.

Second. That the said John Armstrong Chanler is now unmarried, having been divorced from his wife, and that the names and residences of his next of kin and heirs at law, so far as the same are known to your petitioners, or can with reasonable diligence be ascertained by them, are as follows: Your petitioner Winthrop Chanler, who is a brother of said John Armstrong Chanler,
155 your petitioner Lewis S. Chanler, who is a brother of the said John Armstrong Chanler, Margaret Chanler, a sister who resides at No. 314 West 74th Street, New York City, William A. Chanler, a brother, who is now travelling in Europe, and whose post office address is No. 16 Exchange Place, in the Borough of Manhattan, City of New York; Robert W. Chanler, a brother, who is at present sojourning in Europe and whose post office address is No. 16 Exchange Place, Borough of Manhattan, City of New York; Elizabeth W. Chapman, wife of John J. Chapman, a sister who is now sojourning in Europe, and whose post office address is No. 16 Exchange Place, in the City of New York; Alida Emmet, wife of Charles T. Emmet, a sister, who resides at No. 317 West 74th Street, in the Borough of Manhattan, City of New York.

Third. That the probable value of the property possessed and owned by the said John Armstrong Chanler, the alleged incom-

petent person, and also the property belonging to him which has been conveyed during his alleged incompetency, and to whom, and its value, and what consideration was paid for it, if any, or was agreed to be paid, are as follows:

The said John Armstrong Chanler is the owner of personal and real property, situated in the Borough of Manhattan, City of New York, State of New York, and elsewhere, of the probable value of one hundred and fifty thousand dollars ($150,000); and in addition to that he is entitled to receive from the Trustees under the will of his father, Winthrop Chanler, an annual income of
156 about $5,000, during the term of his natural life; that the property conveyed by the said John Armstrong Chanler during his alleged incompetency is as follows: The real estate situated in the block bounded by 10th and 11th Avenues and 14th and 15th Streets, with the bulkhead and dock rights on the westerly side of 11th Avenue, between 14th and 15th Streets, in the Borough of Manhattan, City of New York, in which said real estate the said John Armstrong Chanler had an undivided one-eighth interest, was conveyed by him for the consideration of $100,000 to his brothers and sisters hereinabove mentioned, except that in the case of the said Robert W. Chanler, a brother of the said John Armstrong Chanler, his, the said Robert's interest was conveyed to the United States Trust Company as Trustee for him, and that at the time of such conveyance, a mortgage with accrued interest thereon amounting to $52,124, which was a lien on the share of the said John Armstrong Chanler, was paid and the balance of the purchase price, namely, the sum of $47,876, was received by the said John Armstrong Chanler in cash, no previous application having been made for this relief.

Wherefore, your petitioners pray that Stanford White, or some other suitable and proper person, may be, by the order and the judgment of this Court, appointed a Committee of the person and of the property and estate of the said John Armstrong Chanler, as an incompetent person, and that your petitioners may have
157 such further and other order and relief as may be just and proper in the premises.

Dated, New York, the 8th day of May, 1899.

WINTHROP CHANLER,
By LEWIS S. CHANLER,
LEWIS S. CHANLER,
Petitioners.

JAY & CANDLER,
Attorneys for Petitioners, No. 48 Wall Street, New York.

STATE OF NEW YORK,
County of New York, ss:

Lewis S. Chanler, being duly sworn, deposes and says: That he is one of the petitioners above named; that he has read the foregoing petition and knows the contents thereof, and that the matters of fact therein stated are true.

LEWIS S. CHANLER.

Sworn to before me this 8th day of May, 1899.
JOHN H. BOGARDUS,
Notary Public, Kings County.

Certificate filed in New York County.

VILLAGE OF WHITE PLAINS,
County of Westchester,
State of New York, ss:

Samuel B. Lyon, being duly sworn, deposes and says: That he is a physician, and is the Medical Superintendent of Bloomingdale Asylum, White Plains, a hospital for the care and treatment
158 of the insane, and has been such Superintendent for the past eight years.

That he knows and is personally acquainted with John Armstrong Chanler, who is a patient in the above named hospital. That he believes the said John Armstrong Chanler [illegible]e insane and unable to manage himself or his affairs, and the g[illegible]nds of his belief are as follows:

That since the patient's admission to Bloomingdale, he has had delusions that conspiracies existed against his life and happiness; he has passed his nights in watching; has often declared his belief in his own pre-eminent talents as a lawyer, pugilist, poet, etc.; that while really a very bright man naturally, he is under the delusion that his mental powers are almost supernatural, and that his personality has undergone a change, and that he now has a very high mission to fulfill toward the world. His disease appears to pursue the typical course of what is known as systemized delusional insanity, beginning with suspicions of persecution by enemies for a purpose, and later developing expansive ideas of his own personality.

SAMUEL B. LYON.

Sworn to before me this 27th day of April, 1899.
LOUIS D. FERRISS,
Notary Public, Westchester Co., N. Y.

159 Supreme Court, County of New York.

In the Matter of JOHN ARMSTRONG CHANLER, an Alleged Incompetent Person.

STATE OF NEW YORK,
County of New York, ss:

M. Allen Starr, being duly sworn, says: That he resides at No. 5 West 54th Street, in the Borough of Manhattan, City of New York, and is a graduate of an incorporated medical college and a qualified medical examiner in lunacy, and has a certificate of his qualification as such examiner, and that such certificate, or a certified copy thereof, is on file in the office of the State Commission of Lunacy.

Deponent further says that on the 10th day of March, 1897, he together with Eugene Fuller, M. D., personally examined with care and diligence the said John Armstrong Chanler, who then was residing at the Kensington Hotel, in the City of New York, and as a result of such examination was found that the said John Armstrong Chanler was insane and a proper subject for custody and treatment in some institution for the insane as an insane person, under the provisions of the statute of the State of New York.

Deponent further says that his opinion, formed upon such examination as to the insanity of the said John Armstrong
160 Chanler, was based upon the following facts: The said John Armstrong Chanler stated to me that the color of his eyes, shape of his nose and ears, had been changed so that he resembled Napoleon; that this was done by the spirit which acted upon and through him; that he was inspired to lead a holy war in Europe; that his coming had been foretold in the Book of Revelation; that the said John Armstrong Chanler talked volubly about his inspiration, frequently went into a trans-like state, in which he talked French, and on returning to English declared that it was not he, but the spirit, which had been speaking; showed the scar of a burn on his hand made by carrying a live coal at the command of the spirit; pointed out certain lines in a picture of the Sphinx which he claimed were his initials, put there in prophecy of his coming; said he saw his name carved in the mantel; said the spirit commanded him by its voice which he heard, and said he was immortal, and that nothing could harm him, thus excusing himself for exposure to cold, neglecting ordinary clothing and going in bare feet.

Deponent further says, that he learned from the valet of the said John Armstrong Chanler, who stated that he had been with him for over fourteen years, that the delusion of said Chanler being inspired had led him to do many insane acts, that it had led him to become suspicious of his friends, and that consequently said
161 Chanler had secluded himself, and been neglecting his food, and had become thin and anæmic.

M. ALLEN STARR, M. D.,
Professor of Nervous Diseases,
College Physicians & Surgeons, New York.

Sworn to before me this 6th day of May, 1899.

WILLIAM WHITE WHITTAKER,
Notary Public, Kings County.

Certificate filed in New York County.

Supreme Court, New York County.

In the Matter of JOHN ARMSTRONG CHANLER, an Alleged Incompetent Person.

STATE OF NEW YORK,
County of New York, ss:

Austin Flint, being duly sworn, deposes and says: That he resides at No. 60 East 34th Street, in the Borough of Manhattan, and the City of New York, and is a practicing physician, and has practiced his profession in the said City for upwards of twenty years past, and has made a specialty of mental diseases, and has been
162 duly qualified examiner in lunacy for a number of years.

Deponent further says that, together with Dr. Carlos F. MacDonald, he made a personal examination of John Armstrong Chanler, a patient in the Bloomingdale Asylum, for the purpose of determining his mental condition; that the first examination was made on the 16th day of March, 1898, when deponent, together with the said Dr. Carlos F. MacDonald, spent two hours in conversation with said Chanler in his apartments at Bloomingdale; that at the time of said visit the dependent carefully examined the said John Armstrong Chanler, who immediately began to explain his case to deponent and the said Dr. MacDonald, and said, among other things, that he was the victim of a gigantic conspiracy on the part of his relatives, who were jealous of his great mental and physical superiority to them; the other conspirators being prominent citizens of the City of New York, who were named by the said John Armstrong Chanler, including prominent lawyers and Judges of the said City; that he also said that they had subsidized the State and National Governments, which were arrayed against him; that his case was thoroughly prepared, and it would be taken up by the Courts just as soon as the Spanish-American War scare was over; that he would expose a very prominent person, whom he named, as bogus prestige, and in this he would be "backed by six million, five hundred thousand Silverites." He called our attention to large files of the New York World and other papers, which were piled up on the floor in one corner of his bedroom, which he said contained his case, and which he had edited from day to day as published, "blue penciling" all the lines, and that he would
163 show them all up in due time. He also said that he was an expert in the art of boxing, in pool playing and in pistol shooting; that he could hit with the pistol two out of three apples thrown into the air every time; also that he was an expert in mental strain and in mental impressions, depressions and exaltation, and that he excelled in mental and physical power; that he was a mental gladiator, a John L. Sullivan in debate; that in controversy or debate he not only had never failed to hold his own, but had invariably knocked out his opponent. This great mental and physical power, he said, was due to his peculiar diet of bread and potatoes,

with some other vegetable and fruit; and made other foolish and absurd statements. That the said Chanler, during the said interview talked very rapidly, was exceedingly voluble, demonstrative, effusive and vociferous, and at times vulgar and profane. At the end of the conversation, which he terminated very abruptly, he appeared to be greatly exhausted as a result of the great mental excitement and strain he had been under for the period of two hours. He dismissed deponent and said Dr. MacDonald after exacting from deponent a promise to return in the near future and finish the conversation.

Deponent further says that in pursuance to the said promise, and in order to make a further examination, deponent, together with the said Carlos F. MacDonald, again visited the said John Armstrong Chanler in his apartment at Bloomingdale on April 9th, 1898; that at the said time, the said Chanler was not completely dressed, and acted in a strange manner; that, among other
164 things, he took from under the mattress of his bed a large volume of manuscript, to which he called our attention, stating that it was his case, and that no one but himself knew its contents, and that he intended to read it on the wi-ness stand when his case came up in court. He was as excited, effusive, and vociferous in his manner as on the first visit. At times he shouted at the top of his voice, saying, amongst other things, that his system had gradually undergone a change until he had become a magnet and his stomach a Leyden jar. As proof of this magnetic power, he showed us a much tarnished silver box, which he said he had carried in his pocket for more than two years without its having undergone the slightest change in color, until recently, that is, since he had become a magnet, when it suddenly became oxidized, "as you now see it." This change in color he said could not occur if the box were carried by any one else.

Deponent further says that at said time, he made a physical examination of the said John Armstrong Chanler, which showed that his pulse was 110, his hands cold and tremulous, pupils normal, tongue coated and tremulous, and there was also a marked tremor of the labial muscles and of the eyelids when the eyes were closed. The reflexes were much diminished; there was no sign of ataxia or want of co-ordinating power; he stated that he slept well, that his bowels were regular, and that he was in perfect mental and physical health.

Deponent further says, from the examination so made, and from reading the history of the case in the hospital case book, he was at that time clearly of the opinion that the said John Armstrong Chanler was insane, and a proper subject for attention and
165 treatment as such in an institution for the insane; that the form of insanity from which he was suffering was that known as paranoia, or chronic delusional insanity, which is well understood and which is characterized by morbidly extravagant ideas of self importance and grandeur, together with delusions of conspiracy and persecution, and eventually transformation of the personality of the individual.

Deponent further says that subsequently, and on the 20th day of April, 1899, deponent, together with the said Dr. Carlos F. MacDonald, made a further examination of the said John Armstrong Chanler, which lasted from about 6:30 to eight o'clock in the evening of that day; and on that occasion found the said John Armstrong Chanler in his bed and in what seemer to be his usual condition. At first he did not complain of any physical ailment, but in reply to questions he said that on April 14th, 1899, he was suddenly seized with a remarkable sensation in the spine, just above the sacrum, that there was no pain, but the sensation was like the revolution of a buzz saw. He got up and moved freely about the room, and after I had carefully examined his spine I found nothing the matter with it. He was wearing a porous plaster, which he said had given him instant relief. He said his nervous system was breaking down under his incarceration, and that the trouble with the spine started in his head. He said nothing about his spinal trouble except in answer to questions. In the opinion of deponent the said John Armstrong Chanler had no disease of the spine, and the difficulty complained of was a delusion, probably temporary.

166 Deponent further says that the said John Armstrong Chanler received him most cordially, was as voluble, excited and vehement in his language as in the examination hereinbefore referred to in April, 1898, talked most freely, and seemed to conceal nothing from deponent.

Deponent further says that the abnormal mental condition of the said John Armstrong Chanler is markedly intensified since the first examination, made in the year 1898; that the said John Armstrong Chanler now firmly believes that he is a reincarnation of Napoleon Bonaparte, and that he recited to deponent and the said Dr. Carlos F. MacDonald seven or eight sonnets of his own composition, saying that he had suddenly become the greatest poet of the world's history, excepting only Shakespeare. He went into a trance, at the request of Dr. MacDonald, and gave the most vivid illustrations of the death of Napoleon. He had told deponent and the said MacDonald that he was Napoleon only when in a trance.

Deponent further says that the foregoing are a few instances of a most violent and tragic talk with the said John Armstrong Chanler, which lasted, as aforesaid, over an hour, and that the said talk was accompanied with denunciations of vile conspiracies against him.

Deponent further says that his opinions expressed at the time of the second interview hereinbefore referred to in April, 1898, have been confirmed, and that the said Chanler is now, in his opinion, a hopeless paranoiac, his mental disorder being incurable and progressive.

Sworn to before me this — day of ——, 1899.

—— ——.

167 State of New York,
County of New York, ss:

William White Whittaker, being duly sworn, deposes and says that he is a clerk in the office of Jay & Candler, the attorneys for the petitioners in the above entitled proceeding. That the foregoing

affidavit which was intended to have been vertified by Dr. Austin Flint was prepared from statements furnished to the attorneys for the petitioners signed by said Dr. Flint, and by Dr. Carlos F. MacDonald and is similar to the affidavit verified by the said Dr. Carlos F. MacDonald, which was prepared from similar statements, and that such affidavit was approved of by Dr. Flint but unfortunately the said Dr. Flint is at present very seriously ill with pneumonia and it is impossible to have him swear to his affidavit at the present time.

WILLIAM WHITE WHITTAKER.

Sworn to before me this 8th day of May, 1899.

JOHN H. BOGARDUS,
Notary Public, Kings County.

Certificate filed in New York County.

168 Supreme Court, New York County.

In the Matter of JOHN ARMSTRONG CHANLER, an Alleged Incompetent Person.

STATE OF NEW YORK,
County of New York, ss:

Carlos F. MacDonald, being duly sworn, says that he resides at 85 Madison Avenue, Borough of Manhattan, City of New York, and has been a practicing physician for upwards of twenty-five years, and has given special attention to the treatment and condition of the insane; that for many years he was superintendent of asylums for insane in the State of New York, and has had occasion to observe and treat many hundreds of persons who were afflicted with insanity; that he was President of the N. Y. State Commission in Lunacy for more than seven years and has been professor of mental diseases in the Bellevue Hospital Medical College for upwards of fifteen years.

Deponent further says that, together with Dr. Austin Flint, he made a personal examination of John Armstrong Chanler, a patient in the Bloomingdale Asylum, for the purpose of determining his mental condition; that the first examination was made on the 16th day of March, 1898, when deponent, together with the said Dr. Austin Flint, spent two hours in conversation with said Chan-
169 ler in his apartments at Bloomingdale; that at the time of said visit deponent carefully examined the said John Armstrong Chanler, who immediately began to explain his case to deponent and the said Dr. Flint, and said, among other things, that he was the victim of a gigantic conspiracy on the part of his relatives, who were jealous of his great mental and physical superiority to them; the other conspirators being prominent citizens of the City of New York, who were named by the said John Armstrong Chanler, including prominent lawyers and Judges of the said City; that he also said that they had subsidized the State and National Governments, which were arrayed against him; that his case was thoroughly prepared,

and it would be taken up by the Courts just as soon as the Spanish-American war scare was over; that he would expose a very prominent person, whom he named, as bogus prestige, and in this he would be "backed up by six million, five hundred thousand Silverities." He called our attention to large files of the New York World and other papers, which were piled up on the floor in one corner of his bedroom, which he said contained his case, and which he had edited from day to day as published, "blue penciling" all the lines, and that he would show them all up in due time. He also said that he was an expert in the art of boxing, in pool-playing and in pistol shooting; that he could hit with the pistol two out of three apples thrown into the air every time; also that he was an expert in mental strain and in mental impressions, depressions and exaltation, and that he excelled in mental and physical power; that he was a mental gladiator, a John L. Sullivan in
170 debate; that in controversy or debate he not only had never failed to hold his own, but had invariably knocked out his opponent. This great mental and physical power, he said, was due to his peculiar diet of bread and potatoes, with some other vegetables and fruit; and made other foolish and absurd statements. That the said Chanler, during the said interview, talked very rapidly, was exceedingly voluble, demonstrative, effusive and vociferous, and at times vulgar and profane. At the end of the conversation, which he terminated very abruptly, he appeared to be greatly exhausted as a result of the great mental excitement and strain he had been under for the period of two hours. He dismissed deponent and said Dr. Flint, after exacting from us a promise to return in the near future and finish the conversation.

Deponent further says that in pursuance to the said promise, and in order to make a further examination, deponent, together with the said Austin Flint, again visited the said John Armstrong Chanler in his apartment at Bloomingdale on April 9th, 1898; that at the said time the said Chanler was not completely dressed, and acted in a strange manner; that, among other things, he took from under the mattress of his bed a large volume of manuscript, to which he called our attention, stating that it was his case, and that no one but himself knew its contents, and that he intended to read it on the witness stand when his case came up in Court. He was as excited, effusive, and vociferous in his manner as on the first visit. At times he shouted at the top of his voice, saying among other things, that his system had gradually undergone a change until he had become a magnet and his stomach a Leyden jar. As proof of this
171 magnetic power, he showed us a much tarnished silver box, which he said he had carried in his pocket for more than two years without its having undergone the slightest change in color, until recently, that is, since he had become a magnet, when it suddenly became oxidized, "as you now see it." This change in color he said could not occur if the box were carried by any one else.

Deponent further says that at said time, he made a physical examination of the said John Armstrong Chanler, which showed that his pulse was 110, his hands cold and tremulous, pupils normal,

tongue coated and tremulous, and there was also a marked tremor of the labial muscles and of the eyelids when the eyes were closed. The reflexes were much diminished; there was no sign of ataxia or want of co-ordinating power; he stated that he slept well, that his bowels were regular, and that he was in perfect mental and physical health.

Deponent further says, from the examination so made, and from reading the history of the case in the hospital case book, he was at that time clearly of the opinion that the said John Armstrong Chanler was insane, and a proper subject for attention and treatment as such in an institution for the insane; that the form of insanity, from which he was suffering, was that known as paranoia, or chronic delusional insanity, which is well understood and which is characterized by morbidly extravagant ideas of self-importance and grandeur, together with delusions of conspiracy and persecution, and eventually transformation of the personality of the individual.

172 Deponent further says that subsequently, and on the 20th day of April, 1899, deponent, together with the said Dr. Austin Flint, made a further examination of the said John Armstrong Chanler, which lasted from about 6:30 to 8 o'clock in the evening of that day; and on that occasion found the said John Armstrong Chanler in his bed and in what seemed to be his usual condition. At first he did not complain of any physical ailment, but in reply to questions he said that on April 14th, 1899, he was suddenly seized with a remarkable sensation in the spine, just above the sacrum, that there was no pain, but the sensation was like the revolution of a buzz saw. He got up and moved freely about the room; careful examination of his spine showed that there was nothing the matter with it. He was wearing a porous plaster, which he said had given him instant relief. He said his nervous system was breaking down under his incarceration, and that the trouble with the spine started in his head. He said nothing about his spinal trouble except in answer to questions. In the opinion of deponent and of the said Dr. Austin Flint the said John Armstrong Chanler had no disease of the spine, and the difficulty complained of was a delusion, probably temporary.

Deponent further says that the said John Armstrong Chanler received him most cordially, was as voluble, excited and vehement in his language as in the examination hereinbefore referred to in April, 1898, talked most freely, and seemed to conceal nothing from deponent.

Deponent further says that the abnormal mental condition of the said John Armstrong Chanler is markedly intensified since the first examination made in the year 1898; that the said John

173 Armstrong Chanler now firmly believes that he is a reincarnation of Napoleon Banaparte, and that he recited to deponent and the said Dr. Austin Flint seven or eight sonnets of his own composition, saying that he had suddenly become the greatest poet of the world's history, excepting only Shakespeare. He went into a trance at the request of deponent, and gave the most vivid

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illustration of the death of Napoleon. He had told deponent that he was Napoleon only when in the trance.

Deponent further says that the foregoing are a few instances of a most violent and tragic talk with the said John Armstrong Chanler, which lasted, as aforesaid, over an hour; and that the said talk was accompanied with denunciations of vile conspiracies against him.

Deponent further says that his opinions expressed at the time of the second interview hereinbefore referred to in April, 1898, have been confirmed, and that the said Chanler is now, in his opinion, a hopeless paranoiac, his mental disorder being incurable and progressive.

CARLOS F. MACDONALD.

Sworn to before me this 5th day of May, 1899.

WILLIAM WHITE WHITTAKER,
Notary Public, Kings County.

Certificate filed in New York County.

M. J. D.

174 Cover endorsed: Supreme Court, New York County. In the Matter of John Armstrong Chanler, an alleged incompetent person. (Original.) Order, Notice of motion petition and affidavits. Jay & Candler, Attorneys for Petitioners, No. 48 Wall Street, New York. Filed and Recorded May 9, 1899.

Supreme Court, County of New York.

In the Matter of JOHN ARMSTRONG CHANLER, an Alleged Incompetent Person.

STATE OF NEW YORK,
County of New York, ss:

William White Whittaker being duly sworn deposes and says that he is a clerk in the office of Jay & Candler the attorneys
175 for the petitioners herein and is of the age of twenty-one years and upwards and that on the 9th day of May, 1899 at the Bloomingdale Asylum in the Village of White Plains, County of Westchester and State of New York at about seven o'clock in the afternoon of said day he served upon John Armstrong Chanler an alleged incompetent person a copy of an order, notice, petition and affidavits of which the foregoing are true copies by then and there delivering to and leaving with the said John Armstrong Chanler in person a true copy of the foregoing order, notice, petition and affidavits, and at the same time delivering to and leaving with Doctor Samuel B. Lyon the person in charge of the said Bloomingdale Asylum in person a true copy of the foregoing order, notice, petition and affidavits.

Deponent furthers says that on the 10th day of May, 1899, he served a copy of the order, notice, petition and affidavits of which the foregoing are true copies on Margaret Chanler at No. 317 West 74th Street in the Borough of Manhattan, City and County of New York, by then and there delivering to and leaving with the said Margaret Chanler in person a true copy of the said order, notice, petition and affidavits of which the foregoing are copies, and that on the 10th day of May, 1899, at No. 317 West 74th Street in the Borough of Manhattan, City and County of New York he served a copy of the order, notice, petition and affidavits of which the foregoing are copies on Alida Emmet by then and there delivering to and leaving with the said Alida Emmet in person a true copy of the said order, notice, petition and affidavits of which the foregoing are copies.

176 Deponent further says that he knew the persons so served as aforesaid to be the persons described in said petition as John Armstrong Chanler, an alleged incompetent person, Margaret Chanler and Alida Emmet.

Deponent further says that on the 10th day of May, 1899, he deposited in the General Post Office in the Borough of Manhattan, City of New York, three sets of copies of the foregoing copy, order, notice, petition and affidavits, each securely closed in a post-paid wrapper one directed to each of the following persons respectively at the places designated below, namely:

One to William A. Chanler, No. 16 Exchange Place, City of New York.

One to Robert W. Chanler, No. 16 Exchange Place, New York City.

One to Elizabeth W. Chapman, No. 16 Exchange Place, City of New York.

(Signed) WILLIAM WHITE WHITTAKER.

Sworn to before me this 17th day of May, 1899.

(Signed) JOHN H. BOGARDUS,
Notary Public, Kings County.

Certificate filed in New York County.

177 Cover endorsed: Supreme Court, New York County. In the Matter of John Armstrong Chanler an alleged incompetent person. Order, Notice of Motion, Petition, Affidavits and Proof of Service. Jay & Candler, Attorneys for petitioners, No. 48 Wall Street, New York. "Filed May 20, 1899."

At a Special Term of the Supreme Court, Part I, Held in and for the Borough of Manhattan, City and County of New York, at the County Court-house, on the 19th Day of May, 1899.

Present: Hon. Henry R. Beekman, Justice.

In the Mater of JOHN ARMSTRONG CHANLER, an Alleged Incompetent Person.

On reading the order made in the above entitled proceed-
178 ings dated on the 9th day of May, 1899, and entered in the office of the Clerk of the County of New York on the 9th day of May, 1899, and on reading the notice for this motion, the petition of Lewis S. Chanler and Winthrop Chanler, dated the 8th day of May, 1899, and the affidavits of Dr. Samuel B. Lyon, verified the 27th day of April, 1899, of Dr. M. Allen Starr, verified the 5th day of May, 1899, of William White Whittaker, verified the 8th day of May, 1899, and of Dr. Carlos F. MacDonald, verified the 5th day of May, 1899, all thereto annexed and all theretofore duly filed, and on reading and filing the affidavit of William White Whittaker, verified the 17th day of May, 1899, showing the service of the said order, notice of motion, petition and affidavits on John Armstrong Chanler, the alleged incompetent person, Margaret Chanler, Alida Emmet, William A. Chanler, Robert W. Chanler and Elizabeth W. Chapman, as required in and by the said order, and after hearing Flamen B. Candler, Esq., of counsel for the said petitioners, and no one appearing in opposition thereto, now on motion of Jay & Candler, attorneys for the said petitioners.

It is ordered that a commission in the nature of a writ de lunatico inquirendo be issued out of and under the seal of this Court in the usual from directed to David B. Ogden, Esq., counsellor-at-law, Allen Fitch, M. D., and George Sherman, all of the Borough of Manhattan, City of New York, and County of New York, to inquire by a jury of the said County whether the said John Armstrong Chanler is an incompetent person and incapable of managing his person and estate and as to the value of the real and personal estate
179 owned by the said John Armstrong Chanler, the alleged incompetent person, and also the property belonging to him which has been conveyed during his alleged incompetency, and to whom, and its value and the consideration paid therefor; and that the Sheriff of the County of New York be instructed in said commission to summon a jury in the manner required by law.

And it is further ordered, that the said commission be executed in the Borough of Manhattan, in the City and County of New York, and that previous notice of the time and place of such execution be given to the said John Armstrong Chanler, the alleged incompetent person, and to Dr. Samuel B. Lyon, the person having the charge and care of him, at least five days before the date thereof.

And it is further ordered that upon the execution of the said commission the said Dr. Samuel B. Lyon, the aforesaid person having the care or custody of the said John Armstrong Chanler, the

said alleged incompetent person, do produce him before the said Commissioners and jury, to be inspected and examined by them whenever the said Commissioners shall so demand.

And it is further ordered, that the Commissioners may in their discretion dispense with the attendance of the said John Armstrong Chanler, the said alleged incompetent person, before them and the jury unless the jurors, some or one of them, shall require his attendance before the jury.

180 And it is further ordered, that the said Commission issue in conformity with this order.

Enter,

[L. S.] HENRY R. BEEKMAN, *J. S. C.*

Cover endorsed: Supreme Court, New York County. In the Matter of John Armstrong Chanler, an alleged incompetent person. Order directing issuance of commission. Jay & Candler, Attorneys for Petitioners, Office and P. O. Adress, No. 48 Wall Street, New York City, N. Y. Motion granted and order signed. Filed and Recorded May 20, 1899.

181 New York Supreme Court, New York County.

In the Matter of JOHN ARMSTRONG CHANLER, an Alleged Incompetent Person.

STATE OF NEW YORK,
County of New York, ss:

David B. Ogden, Allen Fitch and George Sherman, herein appointed by a writ de lunatico inquirendo, dated on the 23rd day of May, 1899, being each duly sworn for himself says that he will faithfully, honestly and impartially discharge the trust committed to him as Commissioner in the above entitled matter.

DAVID B. OGDEN.
ALLEN FITCH.
G. SHERMAN.

Sworn to before me this 5th day of June, 1899.

WILLIAM WHITE WHITTAKER,
Notary Public, Kings County.

Cert. filed in N. Y. Co.

182 Endorsed: New York Supreme Court, New York County. In the Matter of John Armstrong Chanler, an alleged incompetent person. (1) Oath of Commissioners. Jay & Candler, Attorneys for Petitioner, Office and P. O. Address, No. 48 Wall Street, New York City, N. Y. Filed June 12, 1899.

The People of the State of New York by the grace of God free and independent, to David B. Ogden, Esq., Counsellor at Law, Allen Fitch, M. D., and George Sherman, Esq., all of the Borough of Manhattan, City of New York and County of New York, Greeting:

Know ye that we with full faith in your prudence and competency have appointed you Commissioners and have assigned to you and by these presents do appoint and assign to you to inquire by a jury of the said County under the oaths of not less than twelve nor more than twenty-four indifferent persons whether John Armstrong Chanler, of the Borough of Manhattan, County of New York, now in Bloomingdale Asylum in the State of New York is an in-
183 competent person by reason of which infirmity he is incapable of managing his person and property, and if so from what time such infirmity dates and in what manner it has manifested itself, and whether while in such condition the said John Armstrong Chanler has alienated any lands and tenements or not and to what person or persons, when and where and after what manner, and the value thereof and the consideration paid therefor, and what lands and tenements, goods, chattels, and personal property as yet remain to him and of what value the lands and tenements retained by him are and what the issues and profits thereof amount to by the year and what is the value of his goods, chattels and personal property and who are the nearest heirs and next of kin of the said John Armstrong Chanler, and who would be entitled to his estate in case of his death and the age of each.

Wherefore we command you that at a certain day and place in the Borough of Manhattan in the City and County of New York or at certain days and places in said Borough which you shall for that purpose appoint you diligently make inquisition into the facts hereinbefore recited and that you cause previous notice of the time and place of execution of this commission to be given to the said John Armstrong Chanler and to Dr. Samuel B. Lyon, the person having the charge and care of him, of at least five days before the said day and place appointed by you, and that whenever you shall so demand, the said Dr. Samuel B. Lyon shall produce before you and a jury the said John Armstrong Chanler to be inspected and examined by you and the said jury, but that in your discretion you may dispense with the attendance of the said John Arm-
184 strong Chanler before you and the jury unless the jurors some or one of them shall require the attendance of the said John Armstrong Chanler, before the jury, and that you report the inquisition which you shall thereupon make under your hands and seals, together with those of the persons by whom it shall be made, distinctly and plainly and without delay, to our Supreme Court in and for the County of New York, together with this writ, and

We hereby command the Sheriff of the County of New York to notify not less than twelve nor more than twenty-four indifferent persons qualified to serve and not exempt from serving as trial jurors in the Supreme Court of the State of New York to appear be-

fore you at such specified time and place within the said County of New York to make inquiry as commanded by this commission.

Witness Honorable Miles Beach, one of the Justices of our said Supreme Court of the State of New York at the New York County Court House the 23 day of May, 1899.

L. G. M.

[L. S.] WM. SOHMER, *Clerk.*

JAY & CANDLER,
Attorneys for Petitioners, 48 *Wall Street, New York City.*

185 Cover endorsed: Supreme Court, New York County. In the Matter of John Armstrong Chanler, an alleged incompetent person. (Original.) Commission. Jay & Candler, Attorneys for petitioners, No. 48 Wall Street, New York City. Filed June 15, 1899.

Ten Cents Internal Revenue Stamp.

Supreme Court for the County of New York.

In the Matter of JOHN ARMSTRONG CHANLER, an Alleged Incompetent Person.

I, William Sohmer, Clerk of the said County, and Clerk of the Supreme Court of said State for said County,

Do certify, that the oath of David B. Ogden, Allen Fitch
186 and George Sherman in above matter, duly executed, was filed in my office on the 12th day of June, 1899.

Dated, New York, June 12th, 1899.

[L. S.] WM. SOHMER, *Clerk.*

New York Supreme Court, New York County.

In the Matter of JOHN ARMSTRONG CHANLER, an Alleged Incompetent Person.

STATE OF NEW YORK,
County of New York, ss:

David B. Ogden, Allen Fitch and George Sherman herein appointed by a writ de lunatico inquirendo, dated on the 23rd day of May, 1899, being each duly sworn for himself says that he will faithfully, honestly and impartially discharge the trust committed to him as Commissioner in the above entitled matter.

DAVID B. OGDEN.
ALLEN FITCH.
G. SHERMAN.

Sworn to before me this 5th day of June, 1899.

WILLIAM WHITE WHITTAKER,
Notary Public, Kinge County.

Cert. filed in N. Y. Co.

187 Cover endorsed: New York Supreme Court, New York County. In the Matter of John Armstrong Chanler, an alleged incompetent person. Oath of Commissioners. Jay & Candler, Attorneys for Petitioners, Office and P. O. Address, No. 48 Wall Street, New York City, N. Y. Filed June 15, 1899.

Panel of jurors summoned under and pursuant to the annexed precept.

THOMAS J. DUNN, *Sheriff.*

Julius Weil, George A. Toop, Richard Ranft, William H. Porter, Emanuel B. H. Myers, Camell C. Roumage, Joseph S. Stout, Raphael M. Matteson, Philip A. Smyth, Henry Glick, Robert Waller, Jr., Michael Callaghan, Antonio Rasines, Charles A.
188 Wainwright, Benjamin C. Williams, William M. Schwenker, Richard H. Williams, Allen W. Godwin, John W. Smith, Philip A. Smyth, R. C. Veit, Cornelius F. Vanderbilt, Cornelius C. Cuyler, Francis Draz.

The execution of the within precept will appear by the panel of jurors, hereto annexed.

THOMAS J. DUNN, *Sheriff.*

Five Cents Internal Revenue Stamp.
Five Cents Internal Revenue Stamp.
Five Cents Internal Revenue Stamp.
Ten cents Internal Revenue Stamp.

189 New York Supreme Court, New York County.

In the Matter of JOHN ARMSTRONG CHANLER, an Alleged Incompetent Person.

To Thomas J. Dunn, Esq., Sheriff of the County of New York:

By virtue of a commission in the nature of a writ de lunatico inquirendo issued out of and under the seal of the Supreme Court of the State of New York in and for the County of New York, bearing date the 23rd day of May, 1899, to us whose names are hereunder written directed to inquire if John Armstrong Chanler of the Borough of Manhattan, County of New York, now in Bloomingdale Asylum, is an incompetent person or not, these are to require you to cause to come and appear before us not less than twelve nor more than twenty-four indifferent persons qualified to serve and not exempt from serving as trial jurors in the Supreme Court of the State of New York on the 12th day of June, 1899, at four o'clock in the afternoon of the same day, then and there upon their oaths to inquire whether the said John Armstrong Chanler is an incompetent person and of all such matters and things as shall be

given them in charge by virtue of the said commission, and hereof fail not at your peril.

190 Given under our hands and seals the 31st day of May, 1899.

(Sd.)

DAVID B. OGDEN [L. S.]
ALLEN FITCH [L. S.]
G. SHERMAN [L. S.]

Cover endorsed: New York Supreme Court, New York County. In the matter of John Armstrong Chanler, an alleged incompetent person. Precept. Jay & Candler, Attorneys for Petitioners, Office and P. O. Address, No. 48 Wall Street, New York City, N. Y. Filed June 15, 1899. Received at Sheriff's Office June 7—2:36 P. M., 1899. County of New York, N. Y.

An inquisition taken at the County Court House in the Borough of Manhattan, in the County of New York, on the twelfth day of June, 1899, before David B. Ogden, Esq., counsellor at law, Allen Fitch, M. D., and George Sherman, Esq., Commissioners appointed by virtue of a Commission in the nature of a writ de lunatico

191 inquirendo issued out of and under the seal of the Supreme Court of the State of New York on the 23rd day of May, 1899, directed to the said Commissioners to inquire by a jury of the said Court, among other things, whether John Armstrong Chanler of the Borough of Manhattan, County of New York, is an incompetent person, by reason of which infirmity he is incapable of managing his person and property, and if so, from what time such infirmity dates, and in what manner it has manifested itself, under the oaths of Julius Weil, William H. Porter, Emanuel B. H. Myers, Camille C. Roumage, Joseph S. Stout, Raphael M. Matteson, Philip A. Smyth, Henry Glick, Robert Waller, Jr., Michael Callaghan, Antonio Rasines, Charles A. Wainwright, George H. Toop, Benjamin C. Williams and Richard Ranft being fifteen indifferent persons of the said County who being duly summoned and sworn and charged upon their oaths, say:

That the said John Armstrong Chanler at the time of taking this inquisition is a lunatic and is of unsound mind and does not enjoy lucid intervals so that he is incapable of managing his person and property, and that he has been in the same state of lunacy since the 10th day of March, 1897, and what occasioned such mental alienation or his present lunacy, the jurors aforesaid have no information and know not.

That the said John Armstrong Chanler is now confined in the Bloomingdale Asylum at White Plains in the State of New York, he having been committed there on the 10th day of March, 1897, under proceedings taken in accordance with the laws of this State.

That during the incompetency of the said John Armstrong Chanler he conveyed his undivided one-eighth interest in

192 and to the real estate situated in the block bounded by 10th and 11th Avenues and 14th and 15th Streets in the

City of New York with the bulkheads and dock rights on the westerly side of 11th Avenue between 14th and 15th Streets by two certain deeds in consideration of one hundred thousand dollars to his brothers and sisters, one thereof to Winthrop Chanler, Lewis S. Chanler, petitioners herein, William A. Chanler, Margaret Chanler, Elizabeth W. Chapman and Alida Emmet, and the other to the New York Life Insurance and Trust Company, as Trustee under a deed of trust, for Robert W. Chanler, another brother, and that at the time of such conveyances a mortgage with the accrued interest thereon amounting to fifty-two thousand one hundred and twenty-four dollars which was a lien on the share of the said John Armstrong Chanler, was satisfied, the balance, namely, the sum of forty-seven thousand eight hundred and seventy-six dollars was paid over to and received by the said John Armstrong Chanler in cash.

And the jurors aforesaid, under their oaths aforesaid do further say that the said John Armstrong Chanler owns the following lands and tenements:

Premises known as No. 298 Broadway in the City of New York, valued at	$280,000.00
Value of his equity over and above amount due on new buildings and mortgages, about	100,000.00
Value of his equity in 426 Third Avenue, 362 Third Avenue and 360 Third Avenue and 252 East Houston Street, aggregating about	30,000.00
St. Margaret's Home, Red Hook, value	10,000.00
193 Ore lot, Barrytown, New York, equity worth	40,000.00
Merry Mills Farm, Cobham, Virginia valued at	6,500.00
Hawkwood Stock Farm, mortgage for $12,000, no equity.	
Betty A. Badger farm at Roanoke Rapids, N. C.	3,000.00

In addition to his interest in real estate above referred to the said John A. Chanler receives in the neighborhood of five thousand dollars per year from the Executors and Trustees under the last will and testament of his father, John Winthrop Chanler.

And the said John Armstrong Chanler is the owner of the following goods, chattels and personal property, to wit:

737 shares of the Self Threading Sewing Machine Company, par value $100, cost about	$65,925.00
856 Preferred and 230 common stock of the United Industrial Company, and 3540 shares of the Roanoke Rapids Power Company par value per share $100, total cost about	108,000.00
Claim against Roanoke Rapids Power Company on lands at Roanoke Rapids, North Carolina, valued at	2,300.00
Mortgage on the Industrial Company's mill and lands at Roanoke Rapids, North Carolina	35,112.64
Interest to date	1,562.51
194 United Industrial Company's notes secured by a mortgage to Prescott Hall Butler, Trustee	8,000.00
Interest to date	394.67

Amount due by the Industrial Company for other lands not secured and interest	1,047.91
Amount due to Self Threading Sewing Machine Company valued at	26,441.24
Assignment of insurance policy on life of D. B. Miller for loan of 546.50; 5 shares of the Transatlantic Publishing Co. par value $100, value about	500.00
Paintings	5,000.00
Amount held by the United Trust Company for Paris Prize	55,247.50

That the said John Armstrong Chanler was married, but is now divorced, and since his divorce his wife has remarried and is now known as Princess Troubetskoy and the only heirs at law and next of kin and persons who would be entitled to his entire estate in case of his death, are as follows:

Winthrop Chanler, a brother, Lewis S. Chanler, a brother } the petitioners herein.
William A. Chanler, a brother.
Robert W. Chanler, a brother.
Margaret L. Chanler, a sister.
Elizabeth W. Chapman, wife of John Jay Chapman, a sister.
Alida B. Emmet, wife of C. Temple Emmet, a sister, all of whom are of full age.

In testimony whereof as well the said Commissioners and
195 jurors aforesaid have to this inquisition set their hands and seals the day and year first above written.

DAVID B. OGDEN, [L. S.]
ALLEN FITCH, [L. S.]
G. SHERMAN, [L. S.]
Commissioners.

JULIUS WEIL, [L. S.]
RICHD. RANFT, [L. S.]
BENJAMIN C. WILLIAMS, [L. S.]
E. B. H. MYERS, [L. S.]
HENRY GLICK, [L. S.]
JOS. S. STOUT, [L. S.]
PHILIP A. SMYTH, [L. S.]
ANTONIO RASINES, [L. S.]
CHAS. A. WAINRIGHT, [L. S.]
R. WALLER, JR., [L. S.]
WILLIAM H. PORTER, [L. S.]
C. C. ROUMAGE, [L. S.]
R. M. MATTESON, [L. S.]
GEO. H. TOOP, [L. S.]
MICHAEL CALLAGHAN, [L. S.]
Jurors.

196 Cover endorsed: Supreme Court, New York County. In the Matter of John Armstrong Chanler an alleged incompetent person. Inquisition. Jay & Candler, attorneys for petitioners, 48 Wall Street, New York City. Filed June 15, 1899.

New York Supreme Court, New York County.

In the Matter of JOHN ARMSTRONG CHANLER, an Alleged Incompetent Person.

To John Armstrong Chanler and Dr. Samuel B. Lyon:

SIRS: Please take notice that a Commission heretofore issued out of and under and by order of the Supreme Court and dated the 23rd day of May, 1899, to inquire whether John Armstrong Chanler is an incompetent person and by reason of which infirmity he
197 is incapable of managing his person and property and to us directed as Commissioners, will be executed at the County Court House in the Borough of Manhattan and City of New York on the 12th day of June, 1899, at four o'clock in the afternoon of that day.

Dated, New York, May 31st, 1899.

Yours, &c.,

DAVID B. OGDEN,
ALLEN FITCH,
G. SHERMAN,
Commissioners.

STATE OF NEW YORK,
County of New York, ss:

William White Whittaker, being duly sworn says that he is a clerk in the office of Jay & Candler, the attorneys for the petitioners in the within entitled matter, and is of age of twenty-one years and upwards, and that on the 6th day of June, 1899, at about 2 o'clock in the afternoon of that day, at the Bloomingdale Asylum, in the Village of White Plains, County of Westchester and State of New York, he served the within notice on John Armstrong Chanler, an alleged incompetent person, by then and there delivering to and leaving with the said John Armstrong Chanler, a true copy of the within notice.

Deponent further says that at the same time and place he served the within notice on Dr. Samuel B. Lyon, the Superintendent of the Bloomingdale Asylum, in whose charge the said John Armstrong Chanler, an alleged incompetent person, is, by then and there delivering to and leaving with the said Dr. Samuel B. Lyon a true copy of the within notice.

198 Deponent further says that he knew the said John Armstrong Chanler and Dr. Samuel B. Lyon, so served as aforesaid, to be the persons to whom the within notice is addressed.

WILLIAM WHITE WHITTAKER.

Sworn to before me this 9th day of June, 1899.
JOHN H. BOGARDUS,
Notary Public, Kings County.

Certificate filed in New York County.

Cover endorsed: New York Supreme Court, New York County. In the Matter of John Armstrong Chanler an alleged incompetent person. Notice of Hearing. Jay & Candler, Attorneys for petitioners, Office and P. O. Address, No. 48 Wall Street, New York City N. Y. Filed June 15, 1899.

199 New York Supreme Court, County of New York.

Before Commissioners David B. Ogden, Allen Fitch, M. D., George Sherman, and a Sheriff's Jury.

In the Matter of the Petition of WINTHROP CHANLER and LEWIS A. CHANLER, for the Appointment of a Committee of the Person and Estate of JOHN ARMSTRONG CHANLER, an Alleged Incompetent.

NEW YORK, June 12th, 1899—4 o'clock p. m.

Appearances:

Messrs. Jay & Candler, appear for Winthrop Chanler and Lewis A. Chanler, the Petitioners,

Mr. Flamen B. Candler and Mr. Egerton L. Winthrop, Jr., of Counsel.

No appearance on the part of the alleged lunatic.

Mr. Candler:

GENTLEMEN OF THE JURY: The case you are brought here to consider and in which this commission has been issued for the three Commissioners now presiding and a Sheriff's Jury, is that of John Armstrong Chanler, and is to determine and it is to inquire into whether John Armstrong Chanler is competent to take charge of his affairs.

Mr. Chanler was found, as far back as March 10th, 1897,
200 to be of unsound mind, and was committed on the certificates of Doctors Starr and Fuller, two physicians, and the proper authorities, to the Bloomingdale Asylum, where he has been and now is; and his disease has been progressive and we are here to show to you that he is entirely incompetent to take charge of his affairs; we shall also show what his estate is and that you may find that a committee be appointed to take charge of his person and estate. He is a man of means, and we will show what his estate consists of.

This proceeding is taken by the petitioners, Winthrop Chanler and Lewis A. Chanler, brothers of the alleged incompetent and it is a matter of considerable importance to the members of the family and relatives of the afflicted man and we will call on the stand a

number of prominent physicians and we will ask you to assist David B. Ogden, Esq., Dr. Allen Fitch and Mr. George Sherman, who have been appointed by the Supreme Court, with your assistance, to determine whether or not the petition of the petitioners should be granted. (Reads petition.)

We shall call several other prominent physicians who are specialists in their departments of learning and show that the disease of which the alleged incompetent, John Armstrong Chanler, is suffering is progressive and incurable. We will show by his brothers and associates in business what his estate consists of and after adducing this testimony we shall ask you to grant this petition.

The Court has authorized the Commissioners or any of the jurors to have Mr. Chanler produced here in Court before you, to see him if you wish to put him on the stand to hear what he has to
201 say. He is not here today and we shall not bring him here unless we have the petition of one of the jurors or Commissioners who should like to see him—if any, of the Commissioners or any of the jurors would like to have him put on the stand we will have him brought here and put him on the stand. Dr. Lyon, of the Bloomingdale Asylum, will tell you why he is not here today. He has stated to him that he has an infirmity which makes it impossible for him to be here today. The doctor stated that he suffers from delusion, that the infirmity may not be real.

If after hearing this testimony you want him brought here he will be brought here at another session of the inquest and then you can determine from his own testimony as to whether this petition should be granted and as to whether he is responsible and competent to take charge of his affairs.

Mr. Candler: I will offer in evidence a notice addressed to Mr. Chanler, to Dr. Lyon, in whose custody he is, notifying him of this hearing, personal service upon them both on June 6th, 1899.

The notice is admitted in evidence and marked Petitioner's Exhibit No. 1, June 12th, 1899.

Dr. SAMUEL B. LYON, called as a witness in behalf of the petitioners, was duly sworn, and testified as follows:

By Mr. Candler:

Q. What is your full name, doctor?
A. Samuel B. Lyon.
Q. Where do you reside?
A. At White Plains, New York.
Q. What is your profession?
A. Doctor, physician.
Q. How long have you been a physician?
202 A. Twenty years.
Q. How long have you been occupied—how have you been occupied during that time, in your profession?
A. In caring for and treating the insane.
Q. Have you been connected with any asylum, if so, with what asylum, and in what capacity?

A. I was connected for seven years—physician to the Government Hospital for the Insane—I was connected with the Government Hospital for the Insane at Washington, and since 1886, with the Bloomingdale Asylum; that is thirteen years; since 1890, I have been Superintendent of the Bloomingdale Asylum.

Q. You are the Superintendent of the Bloomingdale Asylum and have been since 1890?

A. Yes, sir.

Q. Are you acquainted with John Armstrong Chanler, the alleged incompetent?

A. Yes, sir; I am.

Q. How long have you known him?

A. Since his admission to the Bloomingdale Asylum.

Q. When was he admitted?

A. March 3rd, 1897.

Q. Have you the commitment papers with you?

A. I have a copy.

Q. Please produce them?

Witness produced the commitment papers.

Witness: This is a copy which I will swear is a correct copy of the commitment of Mr. Chanler.

Q. On whose certificate was he committed?

A. Doctors Starr and Fuller and the commitment was made by Judge Gildersleeve, of the Supreme Court.

The commitment is offered in evidence.

It is admitted and marked "Petitioners' Exhibit No. 2, June 12th, 1899."

203 PETITIONERS' EXHIBIT 2.

STATE OF NEW YORK,
State Commission in Lunacy:
Bloomingdale:

I, the superintendent of Bloomingdale do hereby certify that the document together with the papers annextd thereto on which the words of this certificate are impressed, is a true copy of the orders and all the papers upon which the within named patient was admitted to this hospital.

S. B. LYON, M. D.,
Physician in Charge.

(Signed) S. B. LYON,
Medical Superintendent.

STATE OF NEW YORK,
State Commission in Lunacy:

Petition, Certificate of Lunacy and Orders.

This blank, consisting of five parts, is furnished by the State Commission in Lunacy pursuant to section 60 of chapter 545 of the Laws of 1896, which among other things provides as follows:

"The Commission shall prescribe and furnish blanks for such certificates and petitions, which shall be made only upon such blanks."

This blank, both for originals and copies, may be obtained upon application to the commission, county clerks, superintendents of the poor, commissioners of charities, superintendents of state hospitals and physicians in charge of private institutions for the insane, and is according to forms prescribed by the commission, July 1,
204 1896, from which date such forms are in force.

The blanks should be carefully read and properly filled out to insure the commitment of a patient. Medical examiners in lunacy are required to fill out only the certificate of lunacy. It is expected that the petition and necessary orders will be filled out by the person making the application, a superintendent of the poor, a clerk of the court or a judge granting the order.

If necessary, extra sheets may be used, not exceeding in size those of this blank, which may be readily inserted after removing the stitches. When an extra sheet is added reference should be made upon it to the page and the line number.

For convenience of reference sections 60, 61, 62, 63 and 64 of article 3 of the Insanity Law constituting chapter 28 of the general laws as enacted by chapter 545 of the Laws of 1896, being the principal sections relating to the commitment of the insane, are here inserted:

Section 60. Order for commitment of an insane person.—A person alleged to be insane and who is not in confinement on a criminal charge, may be committed to and confined in an institution for the custody and treatment of the insane, upon an order made by a judge of a court of record of the city or county, or a justice of the supreme court of the judicial district, in which the alleged insane person resides or may be, adjudging such person to be insane, upon a certificate of lunacy made by two qualified medical examiners in lunacy, accompanied by a verified petition therefor, or upon such certificate and petition, and after a hearing to determine such question, as provided in this article. The commission shall prescribe and
205 furnish blanks for such certificates and petitions, which shall be made only upon such blanks. An insane person shall be committed only to a state hospital, a duly licensed institution for the insane, or the Matteawan State hospital, or to the care and custody of a relative or committee, as hereinafter provided. No idiot shall be committed to or confined in a state hospital. But any epileptic or feeble-minded person becoming insane may be committed

as an insane person to a state hospital for custody and treatment therein.

§61. Medical examiners in lunacy; certificates of lunacy.—The certificate of lunacy must show that such person is insane and must be made by two reputable physicians, graduates of an incorporated medical college, who have been in the actual practice of their profession at least three years, and have filed with the commission a certified copy of the certificate of a judge of a court of record, showing such qualifications in accordance with forms prescribed by the commission.

Such physicians shall jointly make a final examination of the person alleged to be insane within ten days next before the granting of the order. The date of the certificate of lunacy shall be the date of such joint examination. Such certificate of lunacy shall be in the form prescribed by the commission, and shall contain the facts and circumstances upon which the judgment of the physicians is based and show that the condition of the person examined is such
206 as to require care and treatment in an institution for the care, custody and treatment of the insane.

Neither of such physicians shall be a relative of the person applying for the order or of the person alleged to be insane, or a manager, superintendent, proprietor, officer, stockholder, or have any pecuniary interest, directly or indirectly or be an attending physician in the institution to which it is proposed to commit such person.

§62. Proceedings to determine the question of insanity.—Any person with whom an alleged insane person may reside or at whose house he may be or the father or mother, husband or wife, brother or sister, or the child of any such person, and any overseer of the poor of the town, and superintendent of the poor of the county in which any such person may be, may apply for such order, by presenting a verified petition containing a statement of the facts upon which the allegation of insanity is based, and because of which the application for the order is made. Such petition shall be accompanied by the certificate of lunacy of the medical examiners, as prescribed in the preceding section. Notice of such application shall be served personally, at least one day before making such application, upon the person alleged to be insane, and if made by an overseer or superintendent of the poor, also upon the husband or wife, father or mother or next of kin of such alleged insane person, if there be any such known to be residing within the county, and if not, upon the person with whom such alleged insane person many reside, or at whose house he may be. The judge to whom the application is to be made may dispense with such personal service, or may
207 direct substituted service to be made upon some person to be designated by him. He shall state in a certificate to be attached to the petition his reason for dispensing with personal service of such notice, and if substituted service is directed, the name of the person to be served therewith.

The judge to whom such application is made may, if no demand is made for a hearing in behalf of the alleged insane person, proceed forthwith to determine the question of insanity, and if satisfied that

the alleged insane person is insane, may immediately issue an order for the commitment of such person to an institution for the custody and treatment of the insane. If, however, it appears that such insane person is harmless and his relatives or a committee of his person are willing and able to properly care for him, at some place other than such institution, upon their written consent, the judge may order that he be placed in the care and custody of such relatives or such committee. Such judge may, in his discretion, require other proofs in addition to the petition and certificate of the medical examiners.

Upon the demand of any relative or near fried in behalf of such alleged insane person, the judge shall, or he may upon his own motion, issue an order directing the hearing of such application before him at a time not more than five days from the date of such order, which shall be served upon the parties interested in the application and upon such other persons as the judge, in his discretion, may name. Upon such day, or upon such other day to which the proceeding shall be regularly adjourned, he shall hear the testi-
208 mony introduced by the parties and examine the alleged insane person if deemed advisable in or out of court, and render a decision in writing as to such person's insanity. If it be determined that such person is insane, the judge shall forthwith issue his order committing him to an institution for the custody and treatment of the insane, or make such other order as is provided in this section. If such judge can not hear the application he may, in his order directing the hearing, name some referee, who shall hear the testimony and report the same forthwith, with his opinion thereon, to such judge, who shall, if satisfied with such report, render his decision accordingly. If the commitment be made to a state hospital, the order shall be accompanied by a written statement of the judge as to the financial condition of the insane person and of the persons legally liable for his maintenance as far as can be ascertained. The superintendent of such state hospital shall be immediately notified of such commitment, and he shall, at once, make provisions for the transfer of such insane person to such hospital.

The petition of the applicant, the certificate in lunacy of the medical examiners, the order directing a further hearing as provided in this section, if one be issued, and the decision of the judge or referee and the order of commitment shall be presented at the time of the commitment to the superintendent or person in charge of the institution to which the insane person is committed, and verbatim copies shall be forwarded by such superintendent or person in charge and filed in the office of the state commission in lunacy. The relative, or committee to whose care and
209 custody any insane person is committed, shall forthwith file the petition, certificate and order, in the office of the clerk of the county where such order is made, and transmit a certified copy of such papers, to the commission in lunacy, and procure and retain another such certified copy.

The superintendent or person in charge of any institution for the care and treatment of the insane may refuse to receive any person

upon any such order, if the papers required to be presented shall not comply with the provisions of this section, or if in his judgment, such person is not insane within the meaning of this statute, or if received, such person may be discharged by the commission. No person shall be admitted to any such institution under such order after the expiration of five days from and inclusive of the date thereof. Notwithstanding the requirements of this section that an alleged insane person be duly committed by an order of the court, in a case where the condition of such person is such that it would be for his benefit to receive immediate care and treatment, or if he is dangerously insane so as to render it necessary for public safety that he be immediately confined, he shall be forthwith received by a state institution authorized by law to care for the insane. In such case such insane person shall be so received by such institution upon a certificate of lunacy, executed by two medical examiners in lunacy after the examination and in the manner provided in the preceding section, and upon a petition made by the person authorized by this section to apply to a court for an order of commitment. By virtue of such certificate of lunacy and such petition such insane
210 person may be retained in such institution for a period not to exceed five days. Prior to the expiration of such time an order for his commitment must be obtained in the manner provided by this section. The certificate of lunacy executed by such physicians must contain adequate reasons why the insane person should be immediately received in an institution for the insane for treatment. The superintendent or person in charge of any such institution may refuse to receive such insane person upon such certificate and petition, if in his judgment the reasons stated in the certificate, or the condition of the patient, are not sufficient, or is not of such character, as to make it necessary that the patient should receive immediate treatment. (As amended by ch. 146, L. 1903.)

§63. Appeal from order of commitment.—If a person ordered to be committed, pursuant to this chapter, or any friend in his behalf, is dissatisfied with the final order of a judge or justice committing him he may, within ten days after the making of such order appeal therefrom to a justice of the supreme court other than the justice making the order, who shall cause a jury to be summoned as in case of proceedings for the appointment of a committee for an insane person, and shall try the question of such insanity in the same manner as in proceedings for the appointment of a committee. Before such appeal shall be heard, such person shall make a deposit or give a bond, to be approved by a justice of the supreme court, for the payment of the costs of the appeal, if the order of commitment is sustained. If the verdict of the jury be that such person is insane, the justice shall certify that fact and make an order of commit-
211 ment as upon the original hearing. Such order shall be presented, at the time of the commitment of such insane person, to the superintendent or person in charge of the institution to which the insane person is committed and a copy thereof shall be forwarded to the commission by such superintendent or person in charge and filed in the office thereof. Proceedings under the order

shall not be stayed pending an appeal therefrom, except upon an order of a justice of the supreme court, and made upon a notice and after a hearing, with provisions made therein for such temporary care or confinement of the alleged insane person as may be deemed necessary.

If a judge shall refuse to grant an application for an order of commitment of an insane person proved to be dangerous to himself or others, if at large, he shall state his reasons for such refusal in writing, and any person aggrieved thereby may appeal therefrom in the same manner and under like conditions as from an order of commitment.

§64. Costs of commitment.—The costs necessarily incurred in determining the question of the insanity of a poor or indigent person and in securing his admission into a state hospital, and the expense of providing proper clothing for such person, in accordance with the rules and regulations adopted by the commission, shall be a charge upon the town, city or county securing the commitment. Such costs shall include the fees allowed by the judge or justice ordering the commitment to the medical examiners. If the person sought to be committed is not a poor or indigent person, the
212 costs of the proceedings to determine his insanity and to secure his commitment, as provided in this article, shall be a charge upon his estate, or shall be paid by the persons legally liable for his maintenance. If in such proceedings, the alleged insane person is determined not to be insane, the judge or justice may, in his discretion, charge the costs of the proceedings to the person making the application for an order of commitment, and judgment may be entered for the amount thereof and enforced by execution against such person.

Petition.

In the Matter of an Application for the Commitment of JOHN ARMSTRONG CHANLER, an Alleged Insane Person.

STATE OF NEW YORK,
State Commission in Lunacy:

To the Hon. Henry A. Gildersleeve, Justice or Judge of the Supreme Court of the State of New York:

The petition of Winthrop A. Chanler, Lewis S. Chanler and A. A. Carey, respectfully shows:

1. That the Messrs. Chanler *is a* resident of the City of New York, *of* N. Y., in the county of N. Y., and is (If petition
213 is made by a public officer, so state, and of what county, city or town) Mr. Carey is a resident of Boston, Mass.

2. That they are (If petition is made by a friend, so state; if by a realtive, state relationship) brothers and cousins respectively of J. A. Chanler the alleged insane person.

3. That the said alleged insane person resides or now is at the

house of Kensington Hotel at 5th Ave. and 15th St., county of New York.

4. That the facts upon which the application is based are as follows:

(The petitioner should state any facts observed by or any information known to him, which would tend to show the existence of insanity, such as excitement, violence, despondency, irrational acts and declarations, etc.)

Mr. J. A. Chanler has for several months while at his home in Virginia been acting in a very erratic manner. He has limited himself to a peculiar diet, he has burned his hand by carrying hot coals in it; he has devised many peculiar projects, such as a a roulette scheme to beat Monte Carlo, and he gives as a reason for these and other acts that he is inspired by a spirit which directs him. For the past three weeks in New York he has constantly talked of this delusion, has neglected his health, has injured his person, has been at times wildly excited.

5. That they verily believes it to be for the best interests of the said alleged insane person that an order be granted directing his commitment to an institution for the insane.

214 Wherefore, upon the foregoing facts and the certificate of lunacy hereto annexed, your petitioner- prays that an order be granted adjudging the said alleged insane person to be insane and committing him to Bloomingdale Asylum at White Plains.

(It is essential that the official title of the institution should be correctly inserted.)

Dated March 10th, 1897.

(Signed) WINTHROP A. CHANLER AND
LEWIS S. CHANLER,
No. 16 *Exchange Place,*
(City, Village, or Town of) *New York.*
(Petitioner's signature and address.)

(Signed) ARTHUR A. CAREY,
29 *Fairfield St., Boston, Mass.*

STATE OF NEW YORK,
County of New York,
City, Town or Village of New York, ss:

W. A. Chanler, Lewis S. Chanler & A. A. Carey, being duly sworn, depose and say that they have read the foregoing petition and knows the contents thereof, and that the same is true to the knowledge of deponents, except as to the matters therein stated
215 to be alleged on information and belief, and as to ahose matters they believes it to be true.

(Signed) WINTHROP A. CHANLER.
LEWIS S. CHANLER.
ARTHUR A. CAREY.
(Petitioner's signature.)

Subscribed and sworn to before me this 10th day of March, 1897.
(Signed) H. A. GILDERSLEEVE, *J. S. C.*

Certificate of Justice or Judge Relating to Personal Service.

Before the Hon. Henry A. Gildersleeve, Justice or Judge of Supreme Court, County, City, or Town of New York, on the 10th Day of March, 1897.

In the Matter of an Application for the Commitment of JOHN ARMSTRONG CHANLER, an Alleged Insane Person.

I do hereby certify that I have dispensed with personal service, or that I have directed substituted service as provided by law upon the person hereinafter named, for the following reasons:
The patient is in such a state of excitement and is so easily made dangerous to himself and to others by any criticism or op-
216 position to his delusions that a personal service would be attended by great danger.
(Signed) H. A. GILDERSLEEVE, *J. S. C.*

The following should be filled out only by two medical examiners qualified according to section 60:

Certificate of Lunacy.

STATE OF NEW YORK,
County of New York,
City, Town, or Village of New York, ss:

Statement of Facts.

1. Patient resides at Kensington Hotel, N. Y., County of N. Y.; age, 34 years; nativity (if foreign, how long in U. S.), U. S.; sex, male; color, white; occupation, lawyer; divorced. (Strike out words not required.)
2. Birthplace of father, New York; of mother, New York.
3. Number of previous attacks, one; present attack began in November, 1896 (If the patient has ever been an inmate of an institution for the insane, state when and where, and whether discharged, recovered or otherwise.) Was confined in Neuilly near Paris, France, some years ago for a short time.
4. Was the present attack gradual or rapid in its onset? Gradual.
5. What is the patient's general physical condition? Poor (If afflicted with any infirmity or disease other than insanity,
217 state it.) Anæmic and he is emaciating.
6. Is the patient cleanly or uncleanly in personal habits? Cleanly.
7. Is the patient violent, dangerous, destructive, excited or depressed, homicidal or suicidal? (If either homicide or suicide has

been attempted or threatened, it should be so stated.) Violent, excited, is armed, threatens people, is dangerous.

8. What is the supposed cause of the insanity? (State both predisposing and exciting causes, if known) General nervous hereditary influences much family anxiety.

9. Has the patient insane relatives? If so, state the degree of consanguinity, and whether paternal or maternal. One aunt (paternal).

10. State the patient's habits as to the use of liquor, tobacco, opium or other drug, and whether excessive or moderate. He does not indulge in any bad habits.

We, M. Allen Starr, M. D., a legal resident of 22 W. 48th St., N. Y., County of N. Y., State of New York, and Eugene Fuller, M. D., a legal resident of 252 Lexington Ave., N. Y., County of N. Y., and State aforesaid, being severally and duly sworn, do severally certify and each for himself certifies, with the exceptions which are hereinafter noted, as follows:

1. I am a graduate of an incorporated medical college, and a qualified medical examiner in lunacy; a certificate of my qualifications as such examiner, or certified copy thereof, is on file
218 in the office of the State Commission in Lunacy, and I have received from its secretary an acknowledgment of the receipt of the same.

2. I have with care and diligence personally observed and examined on the date of this certificate, namely, on the 10th day of March, 1897, John Armstrong Chanler, now residing or being at the Kensington Hotel, N. Y., in the County of N. Y., and as a result of such joint examination find, and hereby certify to the fact, that he is insane and a proper subject for custody and treatment in some institution for the insane, as an insane person under the provisions of the statute.

3. I have formed the above opinion upon the subjoined facts:

a. Facts indicating insanity personallly observed by me, as follows:

The patient said (State what the patient said, if anything, in presence of the examiners):

That the color of his eyes, the shape of his nose and ears has been changed, so that he resembles Napoleon; that this was done by the spirit which acts upon and through him, that he is inspired to lead a holy war in Europe; that his coming had been foretold in the book of Revelations.

The patient (State what the patient did in presence of the examiners and also describe his or her appearance and manner):

Talked volubly, about his inspiration, frequently went into a trance-like state in which he talked French and on returning to
219 English declared that it was not he but the spirit which had been speaking. Showed a scar of a burn in his hand made by carrying a live coal at the command of the spirit, pointed out certain lines in a picture of the Sphinx which he claims were his initials put there in prophecy of his coming, said that he saw

his name carved in the marble of the mantel. Said the spirit commanded him by its voice which he heard. Said that he was immortal and that nothing could harm him, thus excusing himself for exposure to cold, neglecting ordinary clothing, going in bare feet.

b. Other facts indicating insanity, including those communicated to me by others, as follows: (State what, if any, significant change there has been in the patient's disposition, mental condition, business or social habits, or bodily health.)

His valet who has been with him 14 years described the gradual development of this delusion of his being inspired and says it has led him to do many insane acts. He has become suspicious of friends, has secluded himself and has been neglecting his food, hence has become thin and anæmic.

4. That the facts stated and information contained in this certificate are true to the best of my knowledge and belief.

(Signed) {M. ALLEN STARR, M. D.
{EUGENE FULLER, M. D.

Severally subscribed and sworn to before me this 10th day of March, 1897.

H. A. GILDERSLEEVE, *J. S. C.*

220 *Order of Hearing.*

(Section 62.)

If a hearing before a judge or referee be granted upon the demand of a relative or near friend of the alleged insane person, or upon the motion of the judge, the following form should be used, otherwise it should be omitted:

Before the Hon. —— ——, Justice or Judge of —— Court, County, City, or Town of ——, on the — Day of ——, 190–.

In the Matter of an Application for the Commitment of —— ——, an Alleged Insane Person.

An application for an order of commitment of the above alleged insane person, based upon the petition of —— —— and upon a certificate of lunacy dated —— —, 190–, having been made and (State degree of relationship, or, if none, name of near friend —— —— having demanded a hearing upon such application, it is hereby

Ordered, That a hearing on such application for an order of commitment of the above alleged insane person be had before —— ——, at the — of —, on the — day of ——, 190–,
221 at — m., at which time testimony shall be heard touching the alleged insanity of the aforesaid person, and, if it be deemed advisable, said person may be examined either in or out of court.

The judge may (or, if a referee be appointed, the referee herein named shall) hear such testimony and make such examination and report the same at once with his decision (or opinion) as to the insanity of such alleged insane person.

And that this order be served upon —— —— the petitioner, and the following named persons: —— —— of —— —— —— of ——.

(Signature) —— ——,
Justice or Judge of the — Court of —.

Decision of judge to be used only if a hearing is had.

In the Matter of an Application for the Commitment of —— ——, an Alleged Insane Person.

A hearing having been had upon the application of —— —— for an order of commitment of the said person to an institution for the custody and tratement of the insane on the — day
222 of ——, and testimony having been taken as required by law, I do hereby decide that the said —— —— is insane and should be committed to an institution for the custody and treatment of the insane.

Dated the — day of ——, 190–.

—— ——,
Justice or Judge of the — Court of —.

Order of Commitment.

Before the Hon. Henry A. Gildersleeve, Justice or Judge of Supreme Court, County, City or Town of New York on the 10th Day of March, 1897.

In the Matter of an Application for the Commitment of JOHN ARMSTRONG CHANLER, an Alleged Insane Person.

Upon the petition of W. A. Chanler, Lewis S. Chanler and A. A. Carey, dated March 10th, 1897, and a certificate of lunacy made by two duly qualified medical examiners in lunacy, which certificate is dated on the 10th day of March, 1897, and which is annexed hereto, and upon such other facts and information as were produced before me at a hearing duly had, and being satisfied that the above alleged insane person is insane and a proper subject for custody and treatment in an institution for the insane within the meaning of the statute, it is therefore hereby
223 Ordered, That the said John A. Chanler be and hereby is adjudged insane and that he be committed to (Insert, correctly, official title of institution) Bloomingdale Insane Asylum at White Plains, N. Y. an institution for the custody and treatment of the insane.

(Signed) H. A. GILDERSLEEVE,
Justice Supreme Court,
State of New York.

Statement of Financial Condition of Insane Person.

(If the order of commitment be directed to a State hospital, the statute requires that the justice or judge shall append a statement as far as can be ascertained of the financial condition of the insane person and of the persons legally liable for h— maintenance.—See section 62.)

——— ———,
Justice or Judge of — Court of —.

224 (Cover:) Copy. State of New York, State Commission in Lunacy. Petition, Certificate of Lunacy and Orders in the Case of John Armstrong Chanler. Residence, Hotel Kensington. County, New York City. Date of Order of Commitment, March 10th, 1897. Institution, Bloomingdale, White Plains, N. Y. Date of Admission, March 13th, 1897. No. of Case Book, 4, page 314. No. for year 53. Consecutive No. 3134. Legal Status (State whether indigent, public or private). Private. Price per Week, $100.00.

Q. Is the Bloomingdale Asylum for the Insane part of any institution in this City?

A. It is the insane department of the New York Hospital.

Q. It is a large institution?

A. A large one; yes, sir.

Q. For how many years has it been in existence?

A. It has over three hundred patients and it has been in existence seventy-five years.

Q. When was he committed to the asylum?

A. On March 3rd, 1897.

225 Q. During that time have you seen him frequently, doctor?

A. Yes, sir.

Q. How frequently?

A. I have not seen him as frequently as I would like it because of the prejudice he has against us and the objection he has to our visiting him; but I have seen him and had reports of him almost from day to day.

Q. When did you last see John Armstrong Chanler?

A. Last Wednesday or Thursday, about three days ago.

Q. And when did you see him before that?

A. Several weeks.

Q. Did you see him in regard to attending before this Commission and jury, to-day?

A. Yes, sir; I knew this case was approaching and I visited him and asked him what he wanted to do in regard to it; whatever he wanted to do I wanted to carry out. I asked him if he wanted to be present here; he said he was physically unable to be present on account of pain in his spine, he described it, due to the conversation he had with people not long before; it being like a buzz saw in the upper part of the neck and scraping down his back, and he also said his knee was affected in the same way and he would be unable

to come. A little subsequently to that I received a request from him to come over again.

Q. In what place?

A. To his room. He did not wish me to represent him but I should come in his place or say that he could not come on account of his infirmity.

Q. Did that infirmity really exist or was it a delusion?

A. I think he has a pain in his spine, but I do not think it would incapacitate him from coming here. I think he felt some pain—
226 he was sincere in that but it was not an incapacity that would prevent an ordinary person from going out; he did not feel as if he could stand up; he has kept his bed for over three weeks at least.

Q. Will you be kind enough to state to the Commissioners and jurors the case of John Armstrong Chanler as you have observed it since he came under your charge, commencing from the record which you have from the time of his commitment into the insane asylum down to the present time?

A. May I refer to my notes?

Q. Yes, doctor; unless some objection is made?

A. What we know of Mr. John Armstrong Chanler is that he had been eccentric for some years; he had peculiar ideas which developed gradually. He began to feel his features were changed; that he discovered a new force in nature by which he was able to do unusual things. He could change his features at will; he could make cards appear to a mirror; he began to have suspicions of those about him and at this time he was in Virginia; there he conducted himself in such a way as to alarm the people very much and he was brought to New York.

Commissioner Ogden: Should the testimony as to his mental condition not be limited to within two years?

Mr. Candler: Yes, sir, I will come down to that presently. I think it is entirely proper to show his condition at that time unless some objection is made, and that we should lead up to that time.

Witness: He came to New York; he exhibited severe attacks—he exhibited severe peculiarities down there and was put into a
227 hotel here and he sat in a darkened room with a revolver beside him ready to repel people who were doing him harm and insulted him; he was then removed to Bloomingdale.

Q. When was that doctor?

A. March 9th, 1897. When he first came to Bloomingdale his suspicions in regard to his enemies were very vivid indeed. He would not go to sleep at night unless the attendant or his nurse was awake. They alternated to keep awake to watch for people coming into his rooms. He said he thought we were in the pay of his family who wanted to get him out of the way so they might get hold of his property. He became very suspicious of his food; he thought that it was poisoned. He would not eat anything we prepared. We were obliged to send to the village and buy bread and cheese and crackers and fruit; we had to buy fruit in cans

and vegetables; fruit which he believed we could not tamper with. After buying bread from one store for a few days he would not be satisfied, he would have bread from another store; that was to see if that store was in collusion with us—he would insist upon getting the bread from another store after buying bread at one place for a time for fear the store would be in collusion with us. He was very denunciatory to us when we came to see him; when we went into the rooms to see him—we went in to see him but it was disagreeable—it was disagreeable on account of the language he used toward us. He remained in that condition much of the time since but I do not think his suspicions are as pronounced now as they were. He also had delusions in regard to his ability and power. He told me he was the greatest prize fighter and the greatest lawyer, and he retained his delusion in regard to his great ability ever since.

He has the same delusions now, although now he has turned
228 that off in the literary direction. He is now the greatest poet; he has the same delusion still that people wanted to get him out of the way. When the Spanish war came up he thought his case was about to be brought up, but when the Spanish war came up that kept the public attention from it—it detracted public attention from his case, but after the Spanish war was over his case would come up and it would be a greater case than the Spanish war; the people would rise up——

Q. What did he do in regard to preparing his case?

A. Since he was with us he kept copious notes; manuscripts two or three inches in thickness; that manuscript shows up the conspiracy as he said, and when he went to our entertainment he would put his foot upon them and guard it; he would guard it carefully, but he claimed it contained the whole case.

Q. How about the newspapers?

A. He has got every newspaper he has received since he came to the Bloomingdale Asylum, in his room; of those he made notes with a pencil. How far he thinks they apply to himself I am unable to say, but he has kept them, the history of his case and the manuscript too. He said after the Spanish war ended the Southern people would rise up to take charge of this matter. He had a habit of standing and throwing his profile against the wall at night and not realizing it and moving his head a little so his nose would come on the side of the head—so his nose would come on the side and he thought he did that by his will power rather than anything else, the change of his nose to the light.

Q. What is the nature of his disease?

A. It is sometimes called systematized delusional insanity;
229 a short name for it is paranoia; it is in the nature of a progressive disease in which a man first has feelings of discomfort; after a time the feelings are due to diseased people and influences and later on he gets indignant and makes it known by violence, later on he concludes he is a person of unusual importance on account of so many people concerning themselves about him and he gets extravagant ideas; and sometimes he takes on an idea as Mr. Chanler lately has—if he is not Napoleon Bonaparte, he is

similar, like Napoleon, and that he will have a career like him and so on.

Q. Is the disease progressive?

A. The disease is a permanent disease and progressive in the stages I have mentioned and finally——

Q. His disease is developing that way—is the disease from which he is suffering developing that way?

A. He has gone through these stages; at the present time he has extravagant ideas about his capacity, so far as it has progressed.

Q. In your opinion, doctor, is it curable or incurable?

A. Incurable.

Q. In your judgment is Mr. Chanler competent to take care of himself or his affairs?

A. He is not.

Mr. Candler: Does any member of the jury desire to ask the witness any questions?

By Commissioner Ogden:

Q. These symptoms you have described commenced at the time your observation commenced at the time he came into the asylum?

A. My observation commenced then. We obtained a his-
230 tory of the case in order to get our record complete. The first part was not of my personal knowledge, but from the history obtained.

Q. He came to the asylum a little over two years ago?

A. Yes sir.

Q. And the symptoms you have described as existing when he came in continued to this day?

A. They have continued as the disease has progressed; some have abated and some have increased some.

Q. But he is under the same delusions——

A. He is under the same delusion. He has various other delusions which I have not enumerated, but they are of the same general character which I have described.

Q. The description you have given applies to the whole period within the first two years?

A. Yes, sir; there was never a time when this condition of mind has been absent; there never was a time when he was lucid as I understand lucid intervals.

By Commissioner Fitch:

Q. What disease is he suffering from?

A. Paranoia; by some it is called systematized delusional insanity.

Q. About what is his age?

A. He is thirty-six years old now.

Q. Would that compare correctly with the development in the case—would it be developed in a case of paranoia—would it be about the age?

A. Yes, sir.

Q. I notice in the certificate that he only took certain articles of

food about two years ago, restricting himself to diet; does he still do that?

A. He still continues a vegetable diet; I am not aware
231 that he has eaten any meat since he was with us. He told me that his mental power was due to his diet, to an extent.

Q. The certificate also says he was dominated by a spirit; is that delusion permanent in his case now?

A. I could not say in regard to that; he is cautious about developing those delusions to us; he is on his guard.

Q. He still thinks he resembles Napoleon?

A. Yes, sir; I think he does.

Q. You think the disease will terminate soon in death?

A. No, sir; there is no liklihood of that.

By a Juror:

Q. Has he ever made any attempt to escape?

A. No, he has no desire to escape—he has made no attempt to escape. I granted him the privilege of all the grounds—I gave him the parole of our grounds on his honor—he is a very honorable man, he went out by himself an hour or so—and then he ceased to go out because he was physically unable on account of his unlikelihood——

By a Juror:

Q. Did he show any homicidal mania?

A. He threatened to kill us—to kill me; he never made any attempt upon me; but that was in the early part of his stay. Since, I don't know whether I mentioned it, but he thinks there is a conspiracy of the "Wall Street clique." He mentioned Choate, and John Pierpont Morgan and Mr. McKinley, and since he has convinced himself that the people are of considerable importance he thinks we are under strappers, and he is very amiable now.

232 By Commissioner Fitch:

Q. You think he would be hurt or injured in any way by producing him here?

A. No, I don't think he would.

Q. You think it is a delusion; on the contrary he would not be in any way injured if he were brought here?

A. He is a hypochondriac—a hypochondriac delusion; he gives very exaggerated meaning to his aches and pains which may not be serious at all. He thinks he cannot go out or get up on account of his pain, while we would probably go around and do our work with the same indisposition and it would not interfere with our attending to business.

Q. The only reason for not producing him is his own wish?

A. That was his decided wish. I gave him the opportunity, and to employ counsel or anything he wanted to do.

By Mr. Candler:

Q. Is he living in luxury and comfort?

A. He has a suite of rooms—two rooms and a bath room; the exclusive attention of a nurse and every luxury he wants in the way of food and everything else.

Mr. Candler (to the jury): Have you gentlemen any questions to ask?

The jury states that there are no further questions.

Witness: He was more confidential with the two other gentlemen that examined him than with me.

233 CARLOS F. MACDONALD, being called as a witness, for the petitioners, was duly sworn, and testified as follows:

By Mr. Candler:

Q. Give us your full name, doctor?
A. Carlos F. MacDonald.
Q. You are a physician?
A. Yes, sir.
Q. And have been since when?
A. Since 1869.
Q. Doctor, have you graduated from any college or institution?
A. From the Bellevue Medical College, in this city.
Q. Officially connected with any hospital?
A. I have been officially and professionally connected with hospitals and asylums—hospitals for the insane and asylums since 1870, in the capacity of assistant physician and medical superintendent, and for seven or eight years President of the State Commission in Lunacy, in this State, an official body having jurisdiction over all the institutions for the insane, involving visitation and examination in a great many cases of insanity.
Q. During that time you examined many cases of mental disease?
A. Yes, sir; many thousands. It was my duty as a medical member of the commission to see all cases in the asylums and hospitals and to examine all recent cases and examine their mental condition; that meant examination of several thousand cases a year.
Q. That included Bellevue Hospital Medical College in this City?
A. There are no cases in the medical college, but it included the patients of the city asylum for the insane in this State from Kings County and all over the State and private asylums as well.

Q. You have given your attention to this branch of medi-
234 cal science all these years?

A. Since 1870, continuously.

Q. Have you served on special commissions appointed by the Governor of the State?
A. Yes, sir; frequently.
Q. For what purpose?
A. For the purpose of determining the mental condition of persons under sentence of death. I think I served on every commission under Governor Cleveland, Governors Morton, Hill and Flower with one or two exceptions.
Q. You consider yourself an expert in this line?

A. So far as I made a special study of the disease; I made a specialty of it.

Q. Are you acquainted with John Armstrong Chanler, the respondent here?

A. Yes, sir.

Q. Have you visited him in the Bloomingdale Asylum for the Insane?

A. Yes, sir.

Q. Tell us when you first visited him and with whom that was and what took place on that occasion?

A. I shall have to refer to my notes as to dates and some of the facts. I first visited John Armstrong Chanler at the Bloomingdale Asylum for the Insane on March 16th, 1898, in company with Dr. Austin Flint, of this city. We went up there to the institution and jointly made a personal examination of Mr. John Armstrong Chanler. It was a joint examination—we were together there and made an examination as to his mental condition. We informed Mr. Chanler who we were and the purpose of our visit; that we were there to examine him as to his mental condition. He received us cordially and immediately began, as he said, to explain his case.

He said he was the victim of a gigantic conspiracy on the
235 part of his relatives, who were jealous of his great mental and physical superiority to theirs, the other conspirators being Joseph H. Choate, Elbridge T. Gerry, Cornelius Bliss, Judge Beekman and several others whom he named; that they had subsidized the State and National Government, which were arrayed against him; that his case was thoroughly prepared——

Q. He named Mr. Choate and Mr. Gerry and others?

A. He named, I think, the most of them were members of the Board of Governors of the New York City Hospital, as that is a branch—of which Bloomingdale is a branch.

Q. That is the reason they were selected?

A. Yes, sir. That they had subsidized the State and National Government, which were arrayed against him; that his case was thoroughly prepared and would be taken up by the Court just as soon as the Spanish-American war scare was over; that he would expose President McKinley's "bogus prestige" and in this he would be "backed up by six million, five hundred thousand silverties." He then called our attention to a large stock of daily newspapers—files of the New York and Virginia newspapers and other papers which were piled up on the floor in one corner of his bedroom,—a large amount of daily papers which he had saved.

Q. What did he say about it?

A. He said those contain my case. He said he had edited these papers from day to day as published, "blue-penciling all the lies," and that he would show them all up in due time. These papers were blue penciled all over—had blue pencil marks all over them. He would show them all up in due time, he said. He also said that

he was an expert in the art of boxing, in pool playing and
236 in pistol shooting, that he could hit, with a pistol, two out of three apples thrown in the air every time. Also, that he

was an expert in mental strain and in mental impression, depression and exaltation, that was his exact language. That he excelled in mental and physical power and that he was "a mental gladiator, the John L. Sullivan in debate;" that in mental contests or debate he not only had never failed to hold his own, but had invariably "knocked out" his opponent. This great mental power and physical power he said was due to his peculiar diet of bread and potatoes with some other vegetables and fruits; that he ate no meat for the reason that persons who eat meat "could only think with their guts," as he expressed it. That he was the best hated man in the community, because he made people think, "not the poor, not the working people," who were all in sympathy with him, but the "white scum of society," the "Riff-raff of society," who hated to think. That he compelled them to think and hence their hatred of him; that he was an expert in "anti-hypnotic subjective subconsciousness;" that he could go into a trance and state—that he could go into a trance state and while in that state his hand would write out predictions of coming events; that on one occasion, while in a trance, his hand wrote out a direction to purchase Manhattan Railroad stock, that he followed the direction and held the stock, which advanced and when the hand told him to sell he did so and made a handsome profit; that on another occasion when in a trance or subconscious state his hand wrote that his eyes would change color at a certain time and that the change would
237 occur within a period of three hours; that his eyes did so change and they are now different in color from what they formerly were; also that the conformation of his nose would gradually change until he would resemble Napoleon Bonaparte. He called our attention to this change which he said was gradually taking place. He was becoming gradually like Napoleon Bonaparte. He had premonitions of coming events; that he could always accurately predict in the morning whether he had a good or bad day. All of the foregoing and a great deal more of similar character which we were unable to follow, was said in a manner which indicated a marked state of morbid mental excitement. He talked so rapidly we were unable to follow him; he was exceedingly voluble—demonstrative, effusive and vociferous and at times vulgar and profane, and talked in an excited way. His manner exhibited a marked state of morbid mental excitement. He smoked cigarettes incessantly during the entire visit. At the end of the conversation, which he terminated very abruptly, he said, "No more to-day." He appeared to be greatly exhausted as a result of a great mental excitement and strain he had been under for a period of two hours. He talked incessantly for two hours and when he said, "No more to-day" he was ready to drop down exhausted. He appeared to be greatly excited. He dismissed us politely after exacting from us a promise to return in the near future and "finish the conversation."

Q. All that took place that afternoon?

A. Yes, sir.

Q. Who was with you at that time?

A. Doctor Austin Flint. He monopolized the conversa-
238 tion all the time so that we did not have an opportunity to make an examination of his physical condition until he dismissed us—we did not have an opportunity until he dismissed us to make a physical examination of him or make such investigation of his physical condition as would enable us to say that the examination was a complete one.

Q. Did you see him again?

A. Yes, sir; we went back in pursuance of that promise.

Q. Who was with you at that time when you went there the second time?

A. Doctor Flint and myself. In pursuance of the promise made to him we again visited Mr. Chanler on April 9th, 1898. He cordially invited us to walk into his room at once; our names were announced; the only garments he had on were a shirt and an under shirt. It was about two o'clock in the afternoon. Mr. Chanler apologized for his appearance saying that he had just breakfasted He walked about the room in this nude state for a few minutes and would occasionally hop and jump as if to display his agility. He expressed pleasure at seeing us again; and after providing us with seats and bringing cushions for us to sit on he put on a pair of trousers and excusing himself proceeded to the water closet adjoining the room in which we were saying that he was going to evacuate his bowels. Before leaving the room he handed each of us a morning paper "to read during his absence," then going to his bed took from under the mattress a large volume of manuscript which he carried with him—a volume twice as large as this (indicating to a book on the desk of the Commissioners). This he carried with him to the water closet. Subsequently he called our attention to the manuscript which was carefully tied with twine and
239 which he said he constantly kept in his possession night and day. He said that it contained a full statement of his case; that no one but himself knew its contents and that he intended to read it on the witness stand when his case came up in Court. On returning from the water closet he lighted a fresh cigarette and at once began to talk in the same excited, effusive and vociferous manner he displayed on the occasion of our former visit, sometimes shouting at the top of his voice. Sometimes he fairly rioted and talked in that rapid way. He was exceedingly exalted in manner and appearance and conversation and he reiterated the same delusional ideas as on the former visit. He said, among other things, that his system had gradually undergone a change until he had become a magnet, he had gradually undergone a change since we were there—he had become a magnet and his stomach a Leyden jar. As proof of this he showed us a little silver box which was much tarnished, which he said he carried in his pocket for more than two years without its having undergone the slightest change; he carried it, he said, for more than two years without ever tarnishing, but recently since he became a magnet it had become oxidized "as you now see it." This change in color, he said, could not occur if

the box were carried by any one else. It was the magnetic effect. We made a physical examination of Mr. Chanler and the pulse was 110; his hands cold and tremulous, pupils normal, tongue coated and tremulous. There was also a marked tremor of the labial muscles and of the eyelids when the eyes were closed; the pupils remained equal in size and reacted to sight. The knee re-
240 flexes were much diminished. There was no sign of the want of muscular power to direct his movements, and no suggestion of paralysis about him. He stated that he slept well and that his bowels were regular and that he was in perfect mental and physical health.

I might say, also, that before we visited him we read his history as it appeared in the hospital case book, including a verbatim statement made by his valet in regard to his condition as it was and the symptoms which he evinced prior to his coming to the hospital.

From the information obtained and the facts observed I reached the conclusion, and Dr. Flint concurred in that—from the information in the case book and from the visits and examinations—from the facts we observed ourselves on our examination we were clearly of the opinion that he was insane and a proper subject for detention and treatment as such in an institution for the insane; and also, that the form of his insanity from which he is suffering is paranoia or chronic delusional insanity, the English term of it. It is an incurable form of mental disease: It is characterized by morbidly exalted ideas of self-importance and grandeur, together with delusions of conspiracy and persecution, all of which he exhibited; and it is also characterized in the mania known in the later stage by the change in the personality of the individual; the transformation of the personality which he evinces clearly by the declarations that he was gradually changing to represent Napoleon Bonaparte and the change in the color of his eyes and physiognomy. This change in personality usually occurs in the third stage of
241 the disease and is ascribed by the patient suffering from paronoia to the influence of some unseen agency. I should say that Mr. Chanler is the most typical classical case of paranoia I have ever seen. I have seen thousands of them. It presents all the essential and diagnostic signs of that disease—delusion, grandeur, exaltation, conspiracy and change of personality.

Q. Did you have a later interview with him, and if so, when?

A. I examined him again in company with Dr. Flint, at Bloomingdale, on April 20th, 1899, this year. This examination lasted from about 6:30 to 8 o'clock P. M. On this occasion he was in bed and he was in what seemed to be his usual physical condition. He did not at first complain of any physical ailment, but in reply to questions he said that on April 14th, 1899, he was suddenly seized with a remarkable sensation in the spine just above the sacrum. There was no pain but the sensation was like the revolution of a buzz-saw. He got up and moved freely about the room. A careful examination of the spine revealed nothing. He was wearing a porous plaster which he said gave him instant relief when he ap-

plied it. He said his nervous system was run down under his "incarceration" and that the trouble in the spinal cord started in his head. He said nothing about his spinal trouble except in answer to questions. We formed the opinion he had no disease of the spine and the difficulty complained of is a delusion, probably temporary. He received us on this occasion very cordially again and was voluble, excited and vehement in his language, the same as on the examination of March, 1898. He talked most freely and seemed to conceal nothing from us. His abnormal mental
242 condition is markedly intensified since the first examination.

He talked freely and concealed nothing from us in regard to himself. His abnormal mental condition was intensified since our first examination; he fully believes, as he expressed it, that he is the reincarnation of Napoleon Bonaparte. He recited to us seven or eight sonnets of his own composition, saying that he had suddenly become the greatest poet in the world's history except only Shakespeare. "Except Shakespeare," he repeated that several times. These sonnets were certainly of a most extraordinary nature and very brilliant in a way. At our suggestion he went into a trance. He said he would become a reincarnation of Napoleon. He went into a trance and gave us a representation of the death-bed scene of Napoleon looking into a hand-mirror and lying on his back. He has the history of Napoleon there which he has blue-penciled all through the points which he applies to his own case as resembling himself and has arranged his bed to resemble the bed on which Napoleon Bonaparte was said to have died and an illustration in the history which he has, he said his bed was similarly. He said that was a mere coincidence, he did not do it intentionally. He did that to show he was in every way a reincarnation of Napoleon. That is the substance of our second examination, although it is only a small part of it, for the reason, he went over so much ground it was impossible to follow him and get it down.

Q. In your opinion, doctor, is he now of unsound mind?

A. Yes, sir.

Q. Is he capable of attending to his person or estate—his affairs?

A. Absolutely not.

243 By Commissioner Ogden:

Q. This opinion is formed on your observation?

A. Yes, sir.

Q. And it is independent of what was told you?

A. Yes, sir. It is confirmed; of course, there is no shadow of doubt in my mind, and I think in the experience—any experienced examiner in lunacy would reach that conclusion without any history of the case, whatsoever.

By Commissioner Fitch:

Q. Paranoia is not preceded by so-called mental storm, is it?

A. No, sir; it is a form of disease which comes on gradually by the process of evolution—gradually evoluted into paranoia; change in the methods of thinking and feeling and acting.

Q. You have no history of a mental storm in his case?
A. No, sir; no acute attack of mania or melancholia, which occur in other forms of insanity.
Q. That fact in connection with the immense amount of delusions which he displayed with them induced you in forming your diagnosis?
A. Yes, sir; and it presents all the ear-marks of typical paranoia. In the physical and mental condition there is no symptom lacking to make it a perfectly typical case of paranoia. If one wanted a case for teaching or describing a case in a text book you could not describe it more graphically than simply taking his case as it presents itself. It is the most striking case of paranoia that I have ever seen in my life.

244 Dr. AUSTIN FLINT, being called as a witness for the petitioners, was duly sworn, and testified as follows:

By Mr. Candler:

Q. Your name, doctor?
A. Austin Flint.
Q. Where do you reside?
A. No. 60 East 34th Street.
Q. Are you a physician?
A. Yes, sir; since 1857.
Q. Where have you been practicing your profession and in what capacity?
A. I began in Buffalo, in 1857; I was connected with the Buffalo General Hospital; then visiting surgeon; in 1859, I was in New Orleans—in the New Orleans school of medicine; in 1860, and '61, and part of 1859 and '60; I was then in New York, and have been in New York ever since.
Q. In what capacity have you practiced your profession?
A. I have been teacher of physiology and am now consulting practitioner of medicine. I have paid special attention for the last ten or twelve years, to mental diseases.
Q. Have you had large experience in the treatment and observation of mental diseases?
A. Considerable experience.
Q. Are you acquainted with John Armstrong Chanler?
A. I made two examinations of Mr. Chanler in connection with Dr. MacDonald, and, on one occasion when I was at Bloomingdale, making an examination of another person, I made a friendly visit upon Mr. Chanler.
Q. Is your recollection of your examination such as stated by Dr. Carlos F. MacDonald?
A. It is. It is correct and his notes were made jointly—
245 the notes were made by us jointly; they do not include everything——
Q. Will you tell us about the examination you made in the absence of Dr. MacDonald, and when and where it was?
A. I examined Mr. Chanler March 16th, with Dr. MacDonald,

and I have listened carefully to his testimony and that is the testimony that I should give if I were to detail to the jury the examination we made and the result arrived at—perhaps adding my recollection to his. On April 9th, I made the examination with Dr. MacDonald with substantially the same result as he has testified. On August 23rd, 1898, I visited Mr. Chanler, and his condition then was somewhat intensified; that is his delusion had become more fixed and he evidently at that time believed that he was Napoleon Bonaparte. On the third occasion when I examined with Dr. MacDonald I think his belief that he was actually Napoleon and that Napoleon had never died or was living in him was decided and fixed, and he had the delusion of the change of personality which is observed in many cases of paranoia.

Q. And from what form of insanity is he now suffering?

A. He is a typical case of what is known as paranoia or chronic delusional insanity.

Q. In your opinion, doctor, is that progressive and incurable?

A. It is incurable and progressive and will finally terminate in dementia. If I may be allowed to say those cases frequently live for a very much longer time, quite different from parresis.

Q. In your judgment is Mr. Chanler now cap-ble of taking care of his estate and person?

A. No, sir; he is not.

246 By Commissioner Ogden:

Q. That is the usual thing, doctor, that a patient suffering from paranoia—it is first by degrees gets a slight form and then a mature delusion?

A. That is the usual thing. I believe that paranoia is due to a congenital defect, that it is a so-called eccentricity and is accompanied often with good mental equipment—with intellectual brilliancy and it gradually fills the mind of appreciation—he gets exalted ideas of his own superiority; he thinks he is persecuted and he has some fixed delusion like this delusion that he is Napoleon Bonaparte.

Q. Is his physical condition all outlined with that form?

A. Nothing could be more typical of that form of disease; it is an absolutely typical case from every point of view.

CHARLES W. WESTON, being called as a witness in behalf of the petitioners, was duly sworn and testified as follows:

By Mr. Candler:

Q. What is your full name?

A. Charles W. Weston.

Q. Are you acquainted with John Armstrong Chanler?

A. Yes, sir.

Q. How long have you known him?

A. Since 1892 or 1893.

Q. Have you had certain business transactions with him?

A. Yes, sir.

Q. Do you know anything in regard to his property?
A. Something, yes.
Q. Will you be kind enough to state to the jury—first state how did you come to know about his property?
47 A. I have been connected in various business ventures with Mr. Chanler for the past five or six years.
Q. You know some of the property which he possesses?
A. Yes, sir.
Q. Will you be kind enough to state it to the Commissioners and o the jury. Do you know to your own knowledge of certain roperty which he now owns?
A. Yes, sir. Mr. Chanler has seven hundred and thirty-seven hares of stock in the Self Threading Sewing Machine Company.
Q. What did that cost?
A. It cost him sixty-five thousand nine hundred and seventy-ive dollars.
Q. What is it worth now?
A. That I am unable to say.
Q. Can you approximate its value?
A. I can simply say that this money Mr. Chanler has advanced—he has advanced certain sums of money to the Self Threading Sewing Machine Company to develop a very valuable invention, this *have* never been fully developed and is not yet fully developed.
Q. It has no present market value?
A. It has no present market value.
Q. What else does he own, to your knowledge?
A. He owns eight hundred and fifty-six shares of preferred stock of the United Industrial Company and two hundred and thirty shares of stock—of common stock of the United Industrial Company. Also three thousand five hundred and forty shares of the Roanoke Rapids Power Company.
Q. At par value they are worth how much?
A. Par value one hundred dollars per share.
Q. What did they cost him?
A. It cost him about one hundred and eight thousand dollars.
Q. Has it any present market value?
248 A. No, sir.
Q. What else does he own?
A. He has also five shares of stock of the Trans-Atlantic Publishing Company, par value one hundred dollars.
Q. Has that any market value?
A. No market value to my knowledge.
Q. What else?
A. On the books of the Roanoke Rapids Power Company, of Roanoke Rapids, North Carolina, Mr. Chanler has a credit of two thousand three hundred dollars.
Q. Is that valuable now?
A. It has been advanced to the company by Mr. Chanler to make certain improvements in the real estate, and is to be repaid by that company in land.
Q. Has he any mortgage in the United Industrial Company?

A. Mortgage on the United Industrial Company's mills and lands, at Roanoke Rapids, amounting to thirty-five thousand one hundred and twelve dollars and sixty-four cents; with interest to date, one thousand five hundred and sixty-two dollars and fifty-one cents; total thirty six thousand six hundred and seventy-five dollars and fifteen cents.

Q. Is that valuable—is that marketable or valuable now?

A. It stands as a lien on the United Industrial Company property.

Q. If it develops successfuly that would be valuable?

A. Yes, sir.

Q. What next?

A. Also notes of the United Industrial Company, secured by mortgage made to Prescott Hall Butler, as Trustee, for eight thousand dollars, with interest to date, amounting to three hundred and ninety-four dollars and sixty-seven cents, making a total of
249 eight thousand three hundred and ninety-four dollars and sixty-seven cents. Also book credits on the books of the United Industrial Company, which are not secured, amounting with interest to date, to one thousand and forty-seven dollars and ninety-one cents.

Q. What about the Self Threading Sewing Machine Company?

A. The Self Threading Sewing Machine Company—he has book credits in his favor—there are book credits in favor of Mr. Chanler for amounts—for loans not secured, amounting to twenty-six thousand four hundred and forty-one dollars and twenty-four cents.

Q. What else?

A. Also, an assignment of an insurance policy on the life of D. D. Miller, securing a loan of five hundred and forty-six dollars and fifty cents. Also certain paintings now in the Manhattan Storage Warehouse Company—at the Lincoln Safe Deposit Company, both of this City, which are insured for five thousand dollars.

Q. What is your best judgment as to their value?

A. They must be worth about that.

Q. What do you say about the mills?

A. Mr. Chanler paid about six thousand five hundred dollars for certain property known as the Merry Mills farm, Cobham, Virginia. He also bought a stock farm known as the Hawkwood stock farm for twenty-five thousand dollars. There is a mortgage of twelve thousand dollars on this property, and I am informed that if the property came to a sale it would probably not realize the amount of the mortgage.

Q. Where is this farm?

A. I don't know where the farm is.

Q. Is there any money in the United States Trust Com-
250 pany?

A. There is a fund in the United States Trust Company, in the name of Mr. John Armstrong Chanler, which is not in cash; it is certain securities which are held by the United States Trust Company, called, "The Paris Prize Fund," twenty-five thousand dollars—second mortgage five per cent. bonds.

Q. You understand that belongs to him or only stands in his name?

A. Yes, it stands in his name.

Q. It is a fund for the prize for students to Paris——

A. Sending art students to Paris, to have them educated. In addition to the Beach Creek railroad five per cent., three hundred and twenty-seven shares of Morris and Essex Railroad, at the last quotation, it is for stock which amounts to thirty thousand two hundred and forty-seven dollars and fifty cents.

Q. Is that part of the Paris Prize Fund?

A. Yes, sir. Making a total amount standing today in the United States Trust Company, in Mr. Chanler's name, fifty-five thousand two hundred and forty-seven dollars and fifty cents.

Q. You understand that is not his property?

A. I am not sure about that.

Q. What do you know about the Betty A. Badger farm, at Roanoke—the Badger farm.

A. He paid three thousand dollars for that; I think it is worth about that sum.

Q. It is at Roanoke Rapids, North Carolina?

A. Yes, sir.

Q. That is all of his property that you know of?

A. That is all I know about Mr. Chanler's affairs.

251 By a Juror:

Q. This two hundred and thirty shares of common stock of the United Industrial Company—will you explain what the nature of their business is?

A. The United Industrial Company was formed to establish industrial plants and factories in different parts of the country wherever most advantageous.

Q. Were there any sales?

A. No sales for the past years.

Q. Nothing transferred at all?

A. Not that I know of.

Q. Do you know of any stock being sold in the Self Threading Sewing Machine Company?

A. No, sir, none of that has been sold.

Q. Is that a company?

A. Yes, sir; it is a company.

Q. You don't know of any stock being sold at all?

A. No, sir.

By a Juror:

Q. Can you tell me whether he acquired either one of those parcels of stocks in the Industrial Company or the Self Threading Sewing Machine Company—what date?

A. I haven't the dates. He acquired stocks from both of those companies at different times; he became interested in the United Industrial Company in the year '93, I think.

By another Juror:

Q. Do you know whether any of those investments were made within two years?
A. No, sir; not within two years.

A. Juror: It could not have been within two years; he was
252 in the asylum in March, 1897.

By a Juror:

Q. Was he an officer in any of those companies?
A. He was at one time an officer in our company—he was at one time an officer in all the companies.
Q. Were you connected with the company?
A. Yes, sir, I am an officer in all three companies. I am Secretary of the Self Threading Sewing Machine Company and Secretary of the Roanoke Rapids Power Company, and Treasurer of the United Industrial Company.

By a Juror:

Q. Incorporated under the laws of this State?
A. The Self Threading Sewing Machine Company and the United Industrial Company are incorporated under the laws of the State of New York; the Roanoke Rapids Power Company is incorporated under the laws of the State of North Carolina. The property is now undergoing development; it is very hard to state the actual value of the securities.
Q. In your opinion has the property any value—has it a prospective value?
A. There is considerable value in it.

By another Juror:

Q. Do you know who induced Mr. Chanler to invest this money in those companies?
A. I do not.

253 WINTHROP CHANLER, one of the petitioners, sworn in his own behalf, and testified as follows:

By Mr. Candler:

Q. What is your full name?
A. Winthrop Chanler.
Q. Are you a brother of John Armstrong Chanler?
A. I am.
Q. You are one of the petitioners?
A. Yes, sir.
Q. Is John Armstrong Chanler, your brother, now married?
A. No.
Q. Has he been married?
A. He has been married; yes, sir.
Q. And a divorce obtained?
A. Yes, sir, so I understand.

Q. His wife has been remarried since the divorce?
A. Yes, sir.
Q. Has he any children?
A. No.
Q. Who are his heirs-at-law and next of kin?
A. His brothers and sisters.
Q. Lewis S. Chanler is one brother—the name of one brother?
A. Yes.
Q. And William A. Chanler, one?
A. Yes.
Q. Robert B. Chanler one?
A. Yes, sir.
Q. Those are his brothers?
A. Yes, sir, and myself.
Q. And his sisters, name them?
A. Margaret L. Chanler, Elizabeth B. Chapman, wife of John J. Chapman, Alida B. Emmet, wife of C. Temple Emmet.
Q. Those are all of full age? And are all his sisters?
A. Yes, sir.
Q. They are all of full age?
A. Yes.
Q. Those are his heirs and next of kin?
A. Yes, sir.
Q. They are all of age?
A. Yes.

254 Q. What property has John Armstrong Chanler conveyed since he was in the Bloomingdale Asylum?

A. He conveyed the property in New York, on West 15th Street, bounded by Tenth Avenue, on the east, and 11th Avenue or the Hudson River on the west and by 14th Street on the south and 15th Street on the north, conveyed for eighty-five thousand seven hundred and fourteen dollars; he had a one-eighth interest in it.
Q. That was conveyed by two deeds?
A. Yes, sir.
Q. Are those the deeds (deeds shown witness)?
A. Yes, sir.
Q. The aggregate was one hundred thousand dollars?
A. Yes, sir.

Counsel for petitioners offers the deeds in evidence.

They are admitted in evidence and marked, respectively, "Petitioners' Exhibit No. 3, and Petitioners' Exhibit No. 4, June 12th, 1899."

Q. What other conveyances did he make?
A. None, to my knowledge.
Q. And that is shown by those two deeds?
A. It is shown by those two deeds.
Q. Will you be kind enough to state what real property Mr. John Armstrong Chanler now owns, and what you know in regard to its value?
A. He has real estate in this City at 298 Broadway, a new building has lately been put there.

Q. What is the value of it?

A. The building is worth about two hundred and eighty thousand dollars, I am given to understand.

Q. Is there any mortgage on it?

A. There is due for mortgage, interest and taxes and so
255 forth about ninety-two thousand dollars and fees for the contractor eighty-nine thousand, leaving an equity of about one hundred thousand dollars.

Q. What about the buildings on Third Avenue?

A. He has three buildings, No. 246 Third Avenue, No. 362 Third Avenue and No. 360 Third Avenue and a house at No. 252 East Houston Street, aggregating about thirty thousand dollars.

Q. What next?

A. He owns a piece of property in Red Hook, known as the St. Margaret's Home; it is valued at ten thousand dollars.

Q. What next?

A. A farm, Ore Lot, near Barrytown, New York; the equity is about thirty-five thousand dollars—it is worth abo t that now.

Q. What next? Do you know anything of his o er property, about the Virginia property?

A. I know very little about that. I know that he had it but I have never seen it. He has under the trust estate of his father a certain amount of property, held in trust——

Q. It is property held in trust?

A. Yes, sir, bond and mortgage.

Q. What is the annual income?

A. Five thousand dollars a year.

Q. Under his father's will he receives about five thousand dollars, annually?

A. Yes, sir; about that.

Q. And these other articles are they personal property, which was testified to by the previous witness?

A. Yes, sir.

By a Juror:

Q. Do you know anything about that?

A. Yes, I know a good deal about it.

256 By Mr. Candler:

Q. What do you know about the seven hundred and thirty-seven shares of the Self Threading Sewing Machine Company, par value of one hundred dollars?

A. I know nothing about them, except from hearsay in his office; whether that is the correct amount or not I don't know.

Q. Have you heard of the other property which the previous witness testified to?

A. Yes, sir.

Q. And that conforms with your knowledge of it?

A. Yes, sir.

By a Juror:

Q. Do you know whether he derived any income from any of this property that Mr. Weston has testified to?

A. No, I don't think so.

Q. Who has charge of his affairs?

A. Mr. Philips, his partner, has charge of it and Mr. Stanford White.

By Mr. Candler:

Q. He was an intimate friend of his?

A. Yes, sir.

Q. He is connected with a firm of architects?

A. Yes, sir.

Q. A man whom he relied upon?

A. Yes, sir.

Q. And he approved of these proceedings?

A. Yes, sir.

Q. Why is he not here as a witness today?

A. Because he was his friend, and the only person in whom he has absolute confidence; he did not want to appear in these proceedings; it is a matter of delicacy with him.

Q. And he is out of town at present?

A. Yes, sir.

257 Mr. Candler: That is our case.

Mr. Candler: There is a desire that the respondent be produced here before the jury; I think it is entirely proper and I shall take an adjournment to any day that will be agreeable to the Commissioners and the jury.

The jury states that they do not desire to have the respondent produced in Court.

Mr. Candler: I want to comply with the wishes of the Commissioners and jurors.

A Juror: The jury does not care to have Mr. Chanler produced before them and for that reason there is no necessity for an adjournment, we can render our verdict now.

Mr. Candler: The order of the Court reads that if the jury or any of the Commissioners desire to have the respondent produced in Court and have him put on the stand they may do so.

The Foreman: It will be very hard to bring this jury here again and it is not their desire to have an adjournment of this inquest; they think the case can be submitted upon the testimony which has been given. They do not wish to have the respondent placed upon the stand.

Commissioner Ogden: The respondent can be produced in Court without any injury or harm being done to himself—I understand the doctors have testified that he is physically able to attend Court?

Mr. Candler: I shall produce him here if it is the wish of
258 the Commissioners and if we take an adjournment to some other day.

Commissioner Fitch: I will ask to have Dr. Lyon recalled,

Dr. SAMUEL B. LYONS, having been previously sworn is recalled by Dr. Fitch.

By Mr. Candler:

Q. Doctor, will you be kind enough to state whether in your judgment, in view of the desire of Mr. John Armstrong Chanler not to come before this commission and jury that it will do him an injury to bring him down here against his will?

A. I think it would be—I think he would be very much incensed and get excited; I think it would be an injury to him. When I said he was physically able to come down I meant if he wanted to come, but not forcibly—not to bring him down forcibly.

Q. You think it would exhaust him to bring him down here before these Commissioners and jurors?

A. Yes, sir.

By Commissioner Fitch:

Q. You think it would be an injury to him to bring him down here? On your former testimony you said it would be no injury?

A. It would be no injury——

Q. Now, you are willing to say it would do him harm and injury if he were brought down here before this commission and the jury?

A. I do not want my testimony to be contradictory. I think his illness is hypochondriacal and he has the physical strength to
259 come down, but I think that he would be excited and disturbed by it and it would make him uncomfortable.

Q. You do not think it would do him harm physically but mentally?

A. Yes, sir.

Q. And do him an injury?

A. Yes, sir.

Q. Not permanently, but temporary?

A. Yes, sir. He is a man that don't bear opposition; he becomes excited—he does not brook opposition——

By a Juror:

Q. Would you have to use force to bring him here?

A. It would just depend; it would depend upon how he took it; he said he did not want to come down.

Dr. CARLOS F. MACDONALD, having been previously sworn, is recalled by Dr. Fitch:

By Mr. Candler:

Q. Will you be kind enough, doctor, to state your views in regard to the effect upon Mr. John Armstrong Chanler, to bring him down here in view of the statement which he made to Dr. Lyons in reference to his preference not to come?

A. I think it would excite him very much; in that way it would tend to aggravate his mental condition. He is physically able to come down here, but it would unduly excite him—it would un-

doubtedly excite him very much and exhaust him as it did when we examined him. He was completely exhausted at the examination—after we examined him.

Q. You think it would be unwise to bring him down here—you think he ought to be brought here?

A. I should judge not unless there is a question for the
260 jury; if they have any question about his mental condition, or if the Commissioners have a desire to have him produced here, then of course he might be brought here——

By Mr. Fitch:

Q. You think under the circumstances it would be unnecessary unless the jury and the Commissioners desired to have him produced?

A. Yes, sir.

Commissioner Fitch: I think you have covered the ground. We wanted to have some reason why he has not appeared at this inquest and if you say it would be an injury to him and unduly excite him to bring him unless the commission found it necessary that is sufficient.

Witness: In my judgment it would aggravate his mental condition and in that way injure him and would subject him to great excitement—get him unduly excited.

Dr. AUSTIN FLINT, having been previously sworn, is recalled.

By Mr. Candler:

Q. Dr. Flint, what have you to say on this subject in regard to bringing Mr. Chanler here under the circumstances mentioned?

A. From my examination of Mr. Chanler, although I quite agree with Dr. Fitch, with the general principle that the alleged lunatic should always be produced if physically able to come, it seems to me that his case is so plain and distinct that it is practically unnecessary; and if it should be necessary to use force to bring
261 him down here against his will I think it would be detrimental to him. Those are my views, although I quite agree with the principle that a lunatic ought to be produced in Court if he can.

The case was then submitted to the jury.

The jury returned a verdict stating that the said John Armstrong Chanler was incompetent to manage his person or his affairs, and also stating in said verdict the property, personal and real owned by the said John Armstrong Chanler and who are his next of kin and heirs at law.

Cover endorsed: New York Supreme Court, New York County. In the Matter of John Armstrong Chanler, an alleged incompetent person. Commission, Inquisition, Exhibits and Testimony. Jay & Candler, Attorneys for petitioners, 48 Wall Street, New York City. Filed June 15, 1899.

262 At a Special Term, Part I, of the Supreme Court of the State of New York, held at the Court House in the Borough of Manhattan, County of New York, on the 23rd day of June, 1899.

Present: Hon. Henry A. Gildersleeve, Justice.

In the Matter of JOHN ARMSTRONG CHANLER, an Alledged Incompetent Person.

On reading the verified petition herein of Winthrop Chanler and Lewis S. Chanler, dated on the 8th day of May, 1899, the notice of motion and proof of service thereto annexed and the order made thereon dated the 19th day of May, 1899, the Commission herein dated on the 23rd day of May, 1899, and the inquisition taken thereon dated the 12th day of June, 1899, with the testimony and other papers thereto annexed, all duly filed in the office of the Clerk of the County of New York, and on reading and filing the notice of this motion with the verified petition of the said Winthrop Chanler and Lewis S. Chanler, dated June 14th, 1899, thereto annexed, and the affidavit of William White Whittaker verified the 16th day of June, 1899, showing due proof of service on the 15th day of June, 1899, of the said notice of motion and petition on John Armstrong Chanler, the alleged incompetent person, and on Dr. Samuel B. Lyon, the person in charge of Bloomingdale
263 Asylum, where the said incompetent person at present resides and the affidavit of Egerton L. Winthrop, Junior, verified the 22nd day of June, 1899, and on hearing Mr. Flamen B. Candler, of counsel for the petitioners and Mr. Henry Lewis Morris, attorney for William A. Chanler, Robert W. Chanler, Margaret L. Chanler, Elizabeth W. Chanler and Alida B. Emmet, heirs at law and next of kin of the said John Armstrong Chanler, who with the said petitioners are all the heirs at law and next of kin of the said John Armstrong Chanler in support of this application, and no one appearing in opposition thereto.

Now, on motion of Jay & Candler, attorneys for the said petitioners, it is

Adjudged, that the findings of the Commissioners and of the jurors upon the execution of the said commission as set forth in the said inquisition be and the same hereby are in all respects ratified and confirmed; and it is further

Adjudged as found by the said Commissioners and jurors as stated in the said inquisition, that on the 12th day of June, 1899, the time of taking the said inquisition the said John Armstrong Chanler was a lunatic and was a person of unsound mind and did not enjoy lucid intervals and was incapable of managing his person and property and that he has been in the same state of lunacy since the 10th day of March, 1897, when, as found in and by the said inquisition, he was committed to the Bloomingdale Asylum at White Plains in the State of New York under proceedings taken in

accordance with the Laws of the State of New York for the commitment to asylums of insane persons. And it is further

264 Adjudged that the prayer of the said petitioners' said petition dated June 14th, 1899, be and the same hereby is granted and that Prescott Hall Butler, Esq., a counsel-at-law, be and he hereby is appointed the Committee of the person and estate of the said John Armstrong Chanler. And it is further

Adjudged, that before the said Prescott Hall Butler as Committee as aforesaid shall enter upon the discharge of his duties as such committee he shall execute with sufficient sureties a bond in the penal sum of fifty thousand dollars conditioned for the faithful discharge of his trust as such Committee and cause the same to be approved by one of the Justices of this Court and filed in the office of the Clerk of the County of New York. And it is further

Adjudged, that out of the first moneys received by the said Prescott Hall Butler as Committee as aforesaid, he shall make the following payments, namely: he shall pay to the said Commissioners David B. Ogden, Allen W. Fitch and George Sherman, each the sum of one hundred dollars in full for his compensation as such Commissioner as aforesaid; to Jay & Candler, attorneys for the petitioners, the sum of one thousand dollars, for their services and counsel fees herein and the further sum of one hundred and ninety dollars as and for the disbursements made by them herein and to Doctor Austin Flint, Doctor Carlos F. MacDonald, and Doctor Samuel B. Lyon, the expert witnesses in this proceeding before the said Commissioners and jurors, such amounts respectively, as the said Prescott Hall Butler as Committee as aforesaid, shall

265 deem reasonable and proper.

Enter,

H. A. G., *J.*

Cover endorsed: New York Supreme Court, New York County. In the Matter of John Armstrong Chanler, an alleged incompetent person. Decretal order. Jay & Candler, Attorneys for Petitioners, Office and P. O. Address, No. 48 Wall Street, New York City, N. Y. Filed and Recorded June 23, 1899.

266 New York Supreme Court, County of New York.

In the Matter of JOHN ARMSTRONG CHANLER, an Alleged Incompetent Person.

To John Armstrong Chanler, Dr. Samuel B. Lyon, Henry Lewis Morris, Esq., Attorney for William A. Chanler, and others.

GENTLEMEN: Please take notice that on the verified petition herein dated on the 8th day of May, 1899, and the notice of motion and proof of service thereto annexed, the order made thereon dated May 19th, 1899, all heretofore duly filed, and on the commission herein dated May 23rd, 1899, and the inquisition in the above entitled proceeding, dated the 12th day of June, 1899, and the testi-

mony and other papers thereto annexed duly returned and this day duly filed in the office of the Clerk of the County of New York, and the annexed petition, application will be made on behalf of the petitioners at Special Term, Part I, of this Court, to be held in and for the County of New York at the County Court House in the Borough of Manhattan, on the 23rd day of June, 1899, at 10:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard for a decretal order confirming the said inquisi-
267 tion and appointing Prescott Hall Butler, Esq., counsellor-at-law, Committee of the person and estate of the said John Armstrong Chanler, an incompetent person, and for such other and further relief as to the Court may seem just and proper.

Dated June 15th, 1899.

Yours, etc.,

JAY & CANDLER,
Attorneys for Petitioners, 48 Wall Street, New York City.

New York Supreme Court, County of New York.

In the Matter of JOHN ARMSTRONG CHANLER, an Alleged Incompetent Person.

To the Honorable the Supreme Court of the State of New York:

The petition of Winthrop Chanler and Lewis S. Chanler, of the Borough of Manhattan, City, County and State of New York, respectfully shows:

First. That your petitioners are brothers of John Armstrong Chanler above named.

Second. That heretofore and on or about the 19th day of
268 May, 1899, an order was duly made and entered directing that a commission in the nature of a writ de lunatico inquirendo be issued out of and under the seal of this Court in the usual form, directed to David B. Ogden, counsellor-at-law, Allen Fitch, M. D., and George Sherman, all of the Borough of Manhattan, among other things to inquire by a jury of the said County whether the said John Armstrong Chanler is an incompetent person and incapable of managing his person and estate, and that subsequently, pursuant to the said order, a commission was duly issued out of this Court on the 23rd day of May, 1899, directed to the said David B. Ogden, Allen Fitch and George Sherman, to inquire by a jury of the said County whether the said John Armstrong Chanler is an incompetent person, by reason of which infirmity he is incapable of managing his person and property, which Commission has been duly executed and returned, with the inquisition and other papers annexed, thereto, by the Commissioners and filed on the 15th day of June, 1899, in the office of the Clerk of the County of New York and that from the said inquisition annexed to the said commission and returned therewith it appears that the jury have found that the said John Armstrong Chanler is a lunatic and is of unsound mind and does not enjoy lucid intervals so that he is incapable of manag-

ing his person and property, and that he has been in the same state of lunacy since the 10th day of March, 1897, as by reference to the said inquisition will more fully and at large appear.

Your petitioners further state that Prescott Hall Butler is a counsellor of this Court and is a man of strict integrity, high
269 character, and of large means and is a suitable and proper person to be appointed as Committee of the person and estate of the said John Armstrong Chanler, and that your petitioners have been informed that the said John Armstrong Chanler desires that the said Prescott Hall Butler should be appointed the Committee of his person and estate; that in the original petition for the issuing of a Commission, filed herein, your petitioners requested the appointment of Stanford White, but that since then the said Stanford White stated to your petitioners that he would not act as such Committee.

Your petitioners further state that as appears from the said inquisition and from the testimony thereon the value of the personal property of the said John Armstrong Chanler is very uncertain and that a bond of $50,000 would be sufficient.

Your petitioners further state that on the execution of the commission of lunacy aforesaid the Commissioners were necessarily employed for one day in the hearing of the testimony and in the taking of the inquisition, and that in their opinion if the Court should allow one hundred dollars for each of the Commissioners the same would be a satisfactory amount.

Your petitioners, therefore, pray that the said Prescott Hall Butler may be appointed the Committee of the person and estate of the said John Armstrong Chanler upon his giving the security for the faithful performance of his trust as such Committee, and according to the statutes and in conformity with the rules and practice of this Court, and for such other and further orders as the Court
270 may think proper to grant.

And your petitioners will ever pray, etc.

Dated June 14th, 1899.

WINTHROP CHANLER,
LEWIS S. CHANLER,
By WINTHROP CHANLER,
Petitioners.

JAY & CANDLER,
Attorneys for Petitioners,
48 *Wall Street, N. Y. City.*

STATE OF NEW YORK,
County of New York, ss:

Winthrop Chanler, being duly sworn, says: That he is one of the petitioners above named; that he has read the foregoing petition and knows the contents thereof and that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief and that as to those matters he believes the same to be true.

WINTHROP CHANLER.

Sworn to before me this 14th day of June, 1899.
WILLIAM WHITE WHITTAKER,
Notary Public, Kings County.

Certificate filed in New York County.

STATE OF NEW YORK,
271 *County of New York, ss:*

William White Whittaker, being duly sworn, says: That he is a clerk in the office of Jay & Candler the attorneys for the petitioners herein and is of the age of twenty-one years and upwards and that on the 15th day of June, 1899, at the Bloomingdale Asylum in the Village of White Plains, County of Westchester and State of New York at about 7 o'clock in the evening of said day he served upon John Armstrong Chanler an alleged incompetent person a copy of the within petition and notice by then and there delivering to and leaving with said John Armstrong Chanler in person a true copy of the within petition and notice and at the same time delivering to and leaving with Doctor Samuel B. Lyons the person in charge of the said Bloomingdale Asylum in person a true copy of the within petition and notice.

WILLIAM WHITE WHITTAKER.

Sworn to before me this 16th day of June, 1899.
GEO. B. GLOVER,
Notary Public, Kings County.

Certificate filed in New York County.

Cover endorsed: New York Supreme Court, New York
272 County. In the Matter of John Armstrong Chanler, an alleged incompetent person. Original petition and notice and proof of service. Jay & Candler, Attorneys for Petitioners, Office and Post Office Address, No. 48 Wall Street, New York City, N. Y. Due and timely service of a copy of the within petition and notice is hereby admitted. Dated June 15, 1899. Henry Lewis Morris, Attorney William A. Chanler and others. Filed June 23, 1899.

273 New York Supreme Court, New York County.

In the Matter of JOHN ARMSTRONG CHANLER, an Alleged Incompetent Person.

STATE OF NEW YORK,
County of New York, ss:

Egerton L. Winthrop, Junior, being duly sworn, deposes and says: That he is an attorney and counsellor at law and member of the firm of Jay & Candler, attorneys for the petitioners herein and that in the month of December, 1897, Mr Winthrop Chanler, one

of the petitioners herein retained deponent's firm to represent the family in proceedings to be taken for the appointment of a committee of the person and estate of John Armstrong Chanler deponent being informed at that time that the said John Armstrong Chanler was contemplating proceedings for his release from Bloomingdale Asylum where he had been duly committed as a person of unsound mind in accordance with the laws of this State, it thereupon became necessary and deponent did carefully examine the proceedings by which the said John Armstrong Chanler had been committed to the Bloomingdale Asylum for the Insane, and deponent had a number of interviews with Doctors Samuel B. Lyon, Carlos F. MacDonald and Austin Flint and also with Mr. Henry Lewis
274 Morris and Mr. Winthrop Chanler in reference to the taking of such proceedings and that in the month of February, 1898, after receiving the reports of Doctors Carlos F. MacDonald and Austin Flint, deponent had long interviews with Doctors Lyon, MacDonald and Flint, it being expected that any time Mr. John Armstrong Chanler might take proceedings for his release; subsequently in the month of August, 1898, deponent had a long conference with Mr. Lewis A. Chanler, one of the petitioners and had some correspondence with Doctors MacDonald and Flint in reference to the condition of Mr. Chanler and arranged with these doctors to be prepared to testify when called upon at any moment.

That subsequently, in the month of April, of this year, 1899, the family commenced these proceedings for the appointment of a committee for Mr. Chanler and before these proceeding were started deponent had a cable correspondence with both the petitioners herein and also with Stanford White who represented the alleged incompetent person and thereupon Lewis S. Chanler, one of the petitioners came over from Europe to attend to the matter and subsequently Winthrop Chanler also came over from Europe for the same purpose.

Deponent further says that as soon as Lewis S. Chanler arrived, a petition and affidavits were prepared by deponent and the papers were duly served upon John Armstrong Chanler and Dr. Lyon, the Superintendent of Bloomingdale Asylum pursuant to the order of this Court and as information had been received that the proceedings would probably be contested it became necessary for deponent
275 and his partner Mr. Flamen Candler to very carefully prepare the case for trial and to have a number of interviews with Doctors Flint, MacDonald and Lyon and also deponent had a number of conferences with Winthrop Chanler one of the petitioners and with Mr. Harry Lewis Morris and with Mr. Weston to have the inventory of the said John Armstrong Chanler's property prepared so that deponent and his partner might be thoroughly prepared for the trial of the proceedings before the Commissioners and the jurors.

Deponent further says that upon the filing of the petition and affidavits an order was entered thereupon by Mr. Justice Beekman, appointing Messrs. Ogden, Fitch and Sherman the Commissioners and subsequently a commission was issued out of and under the seal of the Supreme Court to the said Commissioners. That on the 12th

day of June, 1899, the commission was duly executed before the Commissioners and a Sheriff's jury, and upon that occasion Doctors Flint, MacDonald and Lyon were examined on behalf of the petitioners as to the sanity of the said John Armstrong Chanler and Messrs. Winthrop Chanler and Weston as to the property of the said John Armstrong Chanler.

That the inquisition which had been theretofore prepared by deponent was signed by the Commissioners and jury in and by which they found that the said John Armstrong Chanler was a lunatic and of unsound mind and also found the present condition of his estate.

Deponent further says that subsequently the present commission and inquisition, *the inquisition* were prepared, and duly served upon the incompetent person and upon Dr. Samuel B. Lyon,
276 the Superintendent of the Bloomingdale Asylum for the Insane.

Deponent further says, that the proceedings taken herein were of great importance and required great care and much attention and included the prepartion of many sets of papers and in the opinion of deponent the sum of one thousand dollars would be reasonable compensation for the services rendered herein and that deponent's firm has disbursed the sum of one hundred and ninety dollars for lithographing papers, jury's fees, stenographer's minutes, clerk's fees, etc., etc.

Deponent further says, that he has consulted with Winthrop Chanler, one of the petitioners herein and also with Henry Lewis Morris who represents all the heirs at law and next of kin of John Armstrong Chanler, except Lewis S. Chanler the other petitioner, who is now in Europe, who both stated to deponent that in their opinion the fee of one thousand dollars to deponent's firm for the services rendered herein would be very moderate and entirely satisfactory to them.

Deponent further says, that he has conferred with the said three Commissioners and each has expressed his desire that the court should allow to each commissioner the sum of one hundred dollars for his compensation and they have represented to deponent that under all the circumstances of the case while such sum would be satisfactory they all believe the same to be a very reasonable charge.

Deponent further says that the expert physicians examined before the said Commissioners and jury herein were Dr. Samuel B. Lyon, Dr. Carlos F. MacDonald and Dr. Austin Flint, and they have certain claims against the estate of the said John Armstrong
277 Chanler for their compensation herein, and in the opinion of deponent the order to be made herein should contain a provision in substance leaving the payment of those claims to the discretion of the committee to be appointed in this proceeding.

EGERTON L. WINTHROP, JR.

Sworn to before me this 22nd day of June, 1899.

WILLIAM WHITE WHITTAKER,
Notary Public, Kings County.

Certificate filed in New York County.

Cover endorsed: New York Supreme Court, New York County. In the Matter of John Armstrong Chanler, an alleged incompetent person. Affidavit. Jay and Candler, Attorneys for Petitioners, Office and Post Office Address, No. 48 Wall Street, New York City, N. Y. "Filed June 23, 1899."

Know all men by these presents, that we, Prescott Hall Butler, of No. 52 Wall Street, Borough of Manhattan, City of New York
278 as principal, and the Lawyers' Surety Company of New York, having an office and principal place of business at Nos. 32, 34 & 36 Liberty Street, in the City of New York, as surety, are held and firmly bound unto John Armstrong Chanler, an incompetent person in the sum of fifty thousand ($50,000) dollars lawful money of the United States of America, to be paid to the said John Armstrong Chanler to which payment well and truly to be made the said Prescott Hall Butler binds himself, his heirs, Executors and Administrators, and the said company binds itself, its successors and assigns, jointly and severally, firmly by these presents. Sealed with our seals. Dated the 26th day of June one thousand eight hundred and ninety-nine.

Whereas, by an order of the Honorable Henry A. Gildersleeve, Justice, at a Special Term of the Supreme Court, held in the County of New York on the 23d day of June, 1899, the above bounden Prescott Hall Butler was appointed the Committee of the person and estate of said incompetent.

Now, therefore, the condition of this obligation is such, that if the above bounden Prescott Hall Butler will, in all things, faithfully discharge the trust reposed in him and obey all lawful directions of the said Court, or of a Justice thereof, or of any other Court or Judge having jurisdiction thereof, touching the said trust; and if he will, in all respects, render a just and true account of all moneys and other property received by him and of the application thereof, and of his Committeeship, whenever he is required so to do by the said Court, or a Court of competent jurisdiction, then this obliga-
279 tion to be void, otherwise to remain in full force and virtue.

PRESCOTT HALL BUTLER. [L. S.]
THE LAWYERS' SURETY COMPANY
OF NEW YORK,
[SEAL.] By THOMAS HUNT, *2nd Vice-President.*

Attest:
JOEL RATHBONE, *Secretary.*

Sealed and delivered in presence of:
WM. R. MONTGOMERY, as to P. H. B.
H. G. HINTON, as to L. S. Co.

At a stated meeting of the Board of Directors of The Lawyers' Surety Company of New York, held at the office of the company, Nos. 32, 34 & 36 Liberty Street, in said City, on the 21st day of April, 1897, on motion it was unanimously

"Resolved, that the President, the Vice-President, the Acting Pres-
"ident, or the second Vice-President, be, and either of them is,
"hereby authorized and empowered to sign, execute and deliver any
"and all bonds or undertakings, for or on behalf of the company,
"and to attach thereto the seal of the corporation, the same to be at-
"tested by the Secretary or Acting Secretary."

COUNTY OF NEW YORK, *ss:*

I, Joel Rathbone, Secretary of The Lawyers' Surety Company of New York, have compared the foregoing resolution with the
280 original thereof, as recorded in the Minute Book of said company, and do certify that the same is a true and correct transcript therefrom, and of the whole of said original resolution.

Given under my hand and the seal of the Company, at the City of New York, this 26th day of June, 1899.

[SEAL.] JOEL RATHBONE.

(10c. R. S. Cancelled.)

COUNTY OF NEW YORK, *ss:*

On this 26th day of June, 1899, before me personally appeared Thomas Hunt, 2d Vice-President of The Lawyers' Surety Company of New York, with whom I am personally acquainted, who, being by me duly sworn, said: That he resides in the City of New York; that he is the 2nd Vice-President of The Lawyers' Surety Company of New York, the corporation described in and which executed the above instrument; that he knows the corporate seal of said company; that the seal affixed to the within instrument is such corporate seal; that it was affixed by order of the Board of Directors of said company, and that he signed said instrument as 2nd Vice-President of said Company by like authority. And the said Thomas Hunt further said that he is acquainted with Joel Rathbone and knows him to be the Secretary of said company; that the signature of said Joel Rathbone subscribed to the said instrument is in the genuine handwriting of the said Joel Rathbone and was thereto subscribed by the like order of the said Board of Directors and in the presence
281 of him the said Thomas Hunt, 2nd Vice-President.

H. G. HINTON,
Notary Public, Kings Co., N. Y.

Certificate filed in N. Y. Co.

10c. R. S. cancelled.

COUNTY OF NEW YORK, ss:

On this 27th day of June, 1899, before me personally appeared the within named Prescott Hall Butler, to me known and known to me to be the individual described in and who executed the within bond, and acknowledged that he executed the same.

WM. R. MONTGOMERY,
Notary Public, New York County.

Cover endorsed: New York Supreme Court. In the Matter of John Armstrong Chanler, an incompetent person. Committee Bond. Surety; The Lawyers' Surety Company of New York. I approve of the within Bond, and of the sufficiency of the Surety. June 27th, 1899. Henry R. Beekman, J. S. C. Filed and Recorded June 27, 1899.

282 At a Special Term, Part II, of the Supreme Court of the State of New York, Held at the County Court House in the County of New York, on the 19th day of November, Nineteen hundred and one.

Present: Hon. John Proctor Clarke, Justice.

In the Matter of JOHN ARMSTRONG CHANLER, an Incompetent Person.

Upon reading and filing the petition of Prescott Hall Butler herein, duly verified November 15, 1901, by which it appears that the said Prescott Hall Butler was duly appointed the Committee of the person and property of John Armstrong Chanler, an incompetent person, by order of this Court bearing date June 23, 1899, and thereafter duly qualified and has since acted as such Committee; that the said Prescott Hall Butler has been for several months last past seriously ill and that he is now seriously ill and confined to his bed and unable to perform his duties as Committee of the person and the property of the said John Armstrong Chanler, and that he desires to be relieved from such duties and from the office of such Committee, in and by which petition the said Prescott Hall Butler resigns his office and duties as Committee of the person and property of the said John Armstrong Chanler and prays that
283 such, his resignation may be accepted and that Thomas T. Sherman may be appointed Committee of the person and property of the said John Armstrong Chanler in his place; and upon also reading and filing the consent, duly acknowledged, of the said Thomas T. Sherman to be appointed and to act as such Committee of the person and property of the said John Armstrong Chanler, and upon also reading and filing the bond of the said Thomas T. Sherman to the said John Armstrong Chanler in the penalty of fifty thousand dollars with the Lawyers' Surety Company of New York, as surety, conditioned for the faithful discharge of his trust as such

Committee and duly approved as to form and sufficiency of surety by a Justice of this Court,

Now, upon motion of Evarts, Choate & Beaman, attorneys for said petitioner,

It is ordered that the prayer of the said petition be and the same is hereby granted; that the resignation of the said Prescott Hall Butler as Committee of the person and property of the said John Armstrong Chanler be, and the same is hereby accepted, and that he be, and he hereby is, relieved from all further performance of any duties as such Committee of the person and property of said John Armstrong Chanler.

And it is further ordered that Thomas T. Sherman of the Town of Rye in the County of Westchester be and he hereby is appointed the Committee of the person and property of the said John Armstrong Chanler and that the said Prescott Hall Butler transfer, deliver and pay over to the said Thomas T. Sherman, as such Committee of the property of said John Armstrong Chanler all
284 property and moneys of the said John Armstrong Chanler now in the hands of said Prescott Hall Butler as such Committee.

And it is further ordered that the said Prescott Hall Butler hereafter, as soon as practicable, render to this Court an account of his proceedings as Committee of the person and property of the said John Armstrong Chanler and that when the same shall have been duly examined, passed upon and settled and allowed by this Court, the said Prescott Hall Butler be released and discharged from all further liability, responsibility and accountability for or by reason of any of his acts or doings or omissions, if any, as such Committee and that the bond given by him as such Committee be cancelled and surrendered to him or his attorneys.

And it is further ordered that application herein may be made at any time at the foot of this order for further direction or order with respect to the settlement of the accounts of the said Prescott Hall Buler as such Committee and his release and discharge.

Enter,

J. P. C., *J. S. C.*

285 New York Supreme Court, County of New York.

In the Matter of JOHN ARMSTRONG CHANLER, an Incompetent Person.

To the Supreme Court of the State of New York:

The petition of Prescott Hall Butler respectfully shows:

That by order of this Court, bearing date June 23, 1899, and entered in the office of the Clerk of the County of New York, entitled "In the matter of John Armstrong Chanler, an alleged incompetent person," the said John Armstrong Chanler was adjudged to be incompetent to manage himself or his affairs by reason of lunacy and

your petitioner was appointed the Committee of the person and property of the said John Armstrong Chanler upon executing and filing his bond in the penalty of fifty thousand dollars with sufficient surety conditioned for the faithful discharge of his trust as such Committee, such bond to be approved by a Justice of this Court; that your petitioner duly executed and filed such bond duly approved by a Justice of this Court and that your petitioner has ever since been and acted as and now is the Committee of the person and property of the said John Armstrong Chanler.

That the property and affairs of the said John Armstrong
286 Chanler have been and are in such a condition that they require constant attention for the proper management thereof.

That your petitioner has been for several months last past seriously ill and is now seriously ill and confined to his bed and unable to attend to business or to the affairs of the said John Armstrong Chanler, and your petitioner desires to be immediately relieved from his office as Committee of the person and property of the said John Armstrong Chanler and that another Committee of the person and property of the said John Armstrong Chandler be appointed in the place of your petitioner at once, and without the delay incident to the stating and settlement of the account of the proceedings of your petitioner as such Committee, which your petitioner is ready and willing to make as speedily as possible.

That your petitioner hereby resigns his office and duties as Committee of the person and as Committee of the property of the said John Armstrong Chanler.

That Thomas T. Sherman, counsellor at law, who have been a member of the bar of this State for upwards of twenty years last past, during all of which time he has been associated in business with your petitioner in the same office and who is familiar with the affairs of the estate of the said John Armstrong Chanler and has assisted your petitioner in the management thereof, is, as your petitioner believes, a competent and responsible person to be appointed and to act as Committee of the person and property of the said John Armstrong Chanler in the place and stead of your petitioner, that he has
287 consented to be appointed and to act as such Committee and to give the same security for the performance of his duties as was given by your petitioner.

Wherefore, your petitioner prays that his said resignation as Committee of the person and as Committee of the property of the said John Armstrong Chanler may be accepted by this Court, and that he may be relieved from his office and duties as such Committee; that Thomas T. Sherman of the Town of Rye in County of Westchester, may be appointed Committee of the person and property of the said John Armstrong Chanler in the place of your petitioner, and that upon his appointment and qualification as such Committee, your petitioner may be directed to transfer, deliver and pay over to the said Thomas T. Sherman, as Committee of the property of the said John Armstrong Chanler all moneys and property of the said John Armstrong Chanler now in the hands or under the control of your petitioner and that your petitioner may be per-

mitted, as speedily as possible hereafter, to render to this Court his account of all of his proceedings as Committee of the person and property of the said John Armstrong Chanler and that the same may be judicially examined, passed upon and settled and that upon such settlement thereof your petitioner may be discharged from all further duty, responsibility and accountability for or by reason of any of his acts or doings or omissions, if any, as such Committee and that the bond given by him as such Committee may be thereupon cancelled and surrendered to your petitioner or his attorneys and that your petitioner may have such other or further order
288 or relief in the premises as may be proper and to the Court seem meet.

And your petitioner will ever pray, etc.

PRESCOTT HALL BUTLER, *Petitioner.*

EVARTS, CHOATE & BEAMAN,
Attorneys for Petitioner.

52 Wall Street, Borough of Manhattan, City of New York.

COUNTY OF NEW YORK, *ss:*

Prescott Hall Butler, being duly sworn, deposes and says: That he is the petitioner above named; that he has read the foregoing petition by him subscribed, and knows the contents thereof, and that the same is true to his own knowledge except as to the matters therein stated to be alleged on information and belief and that as to those matters he believes it to be true.

PRESCOTT HALL BUTLER.

Sworn to before me this 15th day of November, 1901.

WM. R. MONTGOMERY,
Notary Public, New York County.

289 New York Supreme Court, County of New York.

In the Matter of JOHN ARMSTRONG CHANLER, an Incompetent Person.

I, Thomas T. Sherman, of the Town of Rye in the County of Westchester, do hereby consent to be appointed and to act as the Committee of the person and property of John Armstrong Chanler an incompetent person.

Dated, New York, November 15, 1901.

THOS. T. SHERMAN.

STATE OF NEW YORK,
County of New York, ss:

On this fifteenth day of November, nineteen hundred and one, before me personally appeared Thomas T. Sherman, to me known, to be the person described in and who signed and executed the fore-

going consent and acknowledged to me that he signed and executed the same.

WM. R. MONTGOMERY,
Notary Public, New York County.

290 Cover endorsed: New York Supreme Court, County of New York. In the Matter of John Armstrong Chanler, an incompetent person. Petition and order. Evarts, Choate & Beaman, Attorneys for Petitioner, 52 Wall Street, New York City. Filed and Recorded Nov. 19, 1901.

Know all men by these presents, that we, Thomas T. Sherman, of the Town of Rye in the County of Westchester, State of New York as principal, and The Lawyers' Surety Company of New York, having an office and principal place of business at Nos. 32, 34 and 36 Liberty Street, in the City of New York, as surety, are held and firmly bound unto John Armstrong Chanler, an incompetent person in the sum of fifty thousand (50,000) dollars, lawful money of the United States of America, to be paid to the said John Armstrong Chanler to which payment well and truly to be made the said Thomas T. Sherman binds himself, his heirs, Executors and Administrators, and the said company binds itself, its successors and assigns, jointly and severally, firmly by these presents. Sealed with our seals. Dated the 18th day of November, 1901.

Whereas, by an order of the Supreme Court, County of
291 New York, about to be made and entered herein the above bounden Thomas T. Sherman is to be duly appointed the Committee of the person and property of said incompetent in the place and stead of Prescott Hall Butler retired.

Now, therefore, the condition of this obligation is such, that if the above bounden Thomas T. Sherman will, in all things, faithfully discharge the trust reposed in him and obey all lawful directions of the said Court, or of a Justice thereof, or of any other Court or Judge having jurisdiction thereof, touching the said trust; and if he will, in all respects render a just and true account of all moneys and other property received by him and of the application thereof, and of his Committeeship, whenever he is required so to do by the said Court, or a Court of competent jurisdiction, then this obligation to be void, otherwise to remain in full force and virtue.

THOS. T. SHERMAN. [L. S.]
THE LAWYERS' SURETY COMPANY
OF NEW YORK,
By THOMAS HUNT, [L. S.]
2nd Vice President.

Sealed and delivered in presence of:
WM. R. MONTGOMERY,
As to T. T. Sherman.
H. G. HINTON,
As to L. S. Co.

Attest:
JOEL RATHBONE, *Secretary.*

At a stated meeting of the Board of Directors of The
292 Lawyers' Surety Company of New York, held at the office of the company, Nos. 32, 34 and 36 Liberty Street, in said City, on the 21st day of April, 1897, on motion, it was unanimously

"Resolved, That the President, the Vice-President, the Acting "President, or the second Vice-President, be, and either of them is, "hereby authorized and empowered to sign, execute and deliver any "and all bonds or undertakings, for or on behalf of the company, "and to attach thereto the seal of the corporation, the same to be "attested by the Secretary or Acting Secretary."

CITY AND COUNTY OF NEW YORK, *ss:*

I, Joel Rathbone, Secretary of The Lawyers' Surety Company of New York, have compared the foregoing resolution with the original thereof, as recorded in the minute book of said company, and do certify that the same is a true and correct transcript therefrom, and of the whole of said original resolution.

Given under my hand and the seal of the company, at the City of New York, this 18th day of November, 1901.

[L. S.] JOEL RATHBONE, *Secretary.*

COUNTY OF NEW YORK, *ss:*

On this 18th day of November, 1901, before me personally appeared Thomas Hunt, 2nd Vice President of The Lawyers' Surety Company of New York, with whom I am personally acquainted, who, being by me duly sworn, said: that he resides in the City of New York, that he is the 2nd Vice President of The Lawyers' Surety Company of New York, the corporation described in and
293 which executed the above instrument; that he knows the corporate seal of said company; that the seal affixed to the within instrument is such corporate seal; that it was affixed by order of the Board of Directors of said company, and that he signed said instrument as 2nd Vice President of said company by like authority. And the said Thomas Hunt further said that he is acquainted with Joel Rathbone, and knows him to be the Secretary of said company; that the signature of said Joel Rathbone subscribed to the said instrument is in the genuine handwriting of the said Joel Rathbone and was thereto subscribed by the like order of the said Board of Directors and in the presence of him the said Thomas Hunt, 2nd Vice President.

H. G. HINTON,
Notary Public, Kings County, N. Y.

Certificate filed in N. Y. Co.

COUNTY OF NEW YORK, *ss:*

On the nineteenth day of November, 1901, before me personally appeared the within named Thomas T. Sherman, to me known and known to me to be the individual described in and who executed

the within bond, and acknowledged to me that he executed the same.

WM. R. MONTGOMERY,
Notary Public, New York County.

294 Cover endorsed: N. Y. Supreme Court. In the Matter of John Armstrong Chanler, an incompetent person. Committee Bond. Surety: The Lawyers' Surety Company of New York. Filed and Recorded Nov. 19, 1901. I approve of the within Bond, and of the sufficiency of the surety. New York, November 19th, 1901. John Proctor Clarke, Justice of the Supreme Court of the State of New York.

No. 776. Form 9.

STATE OF NEW YORK,
County of New York, ss:

I, Peter J. Dooling, Clerk of the said County and Clerk of the Supreme Court of said State for said County, do certify, that I have compared the preceding with the original record on file in my office, and that the same is a correct transcript therefrom, and of the whole of such original.

In witness whereof, I have hereunto subscribed my name and affixed my official seal, this 11th day of October, 1906.

[SEAL.] PETER J. DOOLING, *Clerk.*

295 All of which we have caused by these presents to be exemplified, and the seal of our said Supreme Court to be hereunto affixed.

Witness, Hon. David Leventritt, a Justice of the Supreme Court for the County of New York, the twenty-fifth day of October in the year of our Lord one thousand nine hundred and six, of our independence the one hundred and thirty-first.

[SEAL.] PETER J. DOOLING, *Clerk.*

I, David Leventritt, a Presiding Justice at a Special Term of the Supreme Court of the State of New York for the County of New York, do hereby certify that Peter J. Dooling, whose name is subscribed to the preceding exemplification, is the Clerk of the said County of New York, and Clerk of said Supreme Court for said County duly elected and sworn, and that full faith and credit are due to his official acts. I further certify that the seal affixed to the exemplification is the seal of our said Supreme Court, and that the attestation thereof is in due form.

Dated, New York, Oct. 25th, 1906.

DAVID LEVENTRITT,
Justice of the Supreme Court of the State of New York.

STATE OF NEW YORK,
City and County of New York, ss:

I, Peter J. Dooling, Clerk of the Supreme Court of said State in and for the County of New York, do hereby certify that Hon. David Leventritt, whose name is subscribed to the preceding certificate, is Presiding Justice at a Special Term of the Supreme
296 Court of said State in and for the County of New York, duly elected and sworn, and that the signature of said Justice to said certificate is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court, this 25th day of Oct., 1906.

[SEAL.] PETER J. DOOLING, *Clerk.*

297 PLAINTIFF'S EXHIBIT 4.

Office of Chesapeake and Ohio Railway Co.

STATION LINDSAY, VA., July 13th, 1905.

Mr. John Armstrong Chanler, Cobham, Va.

DEAR SIR: Your letter of July 13th, 1905, notifying me that you have taken up your citizenship at Roanoke Rapids, N. C., and are therefore no longer a citizen of this State and requesting me therefore to remove your name from the list of registered voters of this District received.

I have this day erased your name from the Registration Book; and under the heading "If transferred, when and to what precinct," make the following entry, "Roanoke Rapids, N. C., July 13th, 1905."

Yours truly,

H. G. MAHANES,
Registrar, Lindsays Precinct.

298 PLAINTIFF'S EXHIBIT 5.

This is to certify that John Armstrong Chanler was registered by me as a qualified voter under the New Constitution of Virginia, of Lindsay Precinct, in Albemarle County, Virginia, in October 1902, and that he voted at the election in November, 1902, and that his name is enrolled on the list of permanent voters in Virginia, and recorded in the Clerk's office of Albemarle County.

Witness my hand this the 11 day of July, 1905.

FREDERICK K. PAGE,
Chairman of Board of Registrars for Rivanna District, Albemarle County, Virginia.

(In 1902.)

I, W. L. Maupin, Clerk of this Circuit of the County of Albemarle, Virginia, do certify that F. K. Page who gives the foregoing certifi-

cate was duly qualified as Chairman of Board of Registrars and that Mr. John Armstrong Chanler is a duly qualified voter of this county under the laws of this state.

Given under my hand with the seal of the Court affixed this 12 day of July, 1905.

[Seal of Virginia.]

W. L. MAUPIN, *Clerk.*

299 PLAINTIFF'S EXHIBIT 6.

Marked for identification only.

PLAINTIFF'S EXHIBIT 7.

Marked for identification only.

PLAINTIFF'S EXHIBIT 8.

Copy of inventory and account of Thomas T. Sherman as Committee of the property of John Armstrong Chanler, dated and sworn to December 1, 1903, and filed in the office of the Clerk of the County of New York the same day.

(Not printed in the record by agreement of counsel.)

PLAINTIFF'S EXHIBIT 9.

Copy of statement of account of Stanford White, as attorney in fact and custodian of the property of John Armstrong Chanler, from March 4, 1897, to July 6, 1899.

(Not printed in the record by agreement of counsel.)

PLAINTIFF'S EXHIBIT 10.

Copy of inventory and account of Thomas T. Sherman as Committee of the property of John Armstrong Chanler, dated and sworn to January 31, 1905, and filed in the office of the Clerk of the County of New York the same day.

(Not printed in the record by agreement of counsel.)

300 PLAINTIFF'S EXHIBIT 11.

Copy of account of the Executors of Prescott Hall Butler, deceased, dated May 31, 1906, rendered in an action instituted in the New York Supreme Court, New York County, by Thomas T. Sherman, individually and as Committee of the property of John Armstrong Chanler, an incompetent person, plaintiff, against John Armstrong Chanler, an incompetent person, and others, defendants.

(Not printed in the record by agreement of counsel.)

301 *Stipulation as to Exhibits Offered but Not Received in Evidence, Including Exhibits Marked for Identification.*

United States District Court for the Southern District of New York.

JOHN ARMSTRONG CHALONER, Plaintiff-in-Error,
against
THOMAS T. SHERMAN, Defendant-in-Error.

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto that the depositions taken by either of the above named parties prior to the trial had herein and plaintiff's printed brief and appendix which was handed up to the Trial Court on the trial of this action, and all exhibits marked for identification upon the trial of this action may be and hereby are treated upon the appeal herein as model exhibits, and it is hereby stipulated and agreed, that said depositions, plaintiff's printed brief and appendix, and all exhibits marked for identification may be handed to the Judge presiding in the United States Circuit Court of Appeals upon the argument of this appeal in said Court without the necessity of printing said depositions, plaintiff's brief and appendix, and exhibits marked for identification in the record herein, subject to objection, however, by the defendant-in-error, the right to make which is hereby reserved, as to all or any of said depositions, plaintiff's brief and appendix, and exhibits, etc., properly con-
302 stituting a part of the record on appeal herein.

Dated, New York, October 22, 1913.

WILLIAM DIKE REED,
Attorney for Plaintiff-in-Error.
EVARTS, CHOATE & SHERMAN,
Attorneys for Defendant-in-Error.

303 PLAINTIFF'S EXHIBIT 6 FOR IDENTIFICATION.

Offered, but not received in evidence, except as to the certain portion thereof incorporated in the Bill of Exceptions and printed at page 115 of the record. (Printed thus in full by consent of counsel, subject, however, to the reservations to counsel for the defendant-in-error defined in the preceding stipulation.)

COUNTY OF ALBEMARLE,
State of Virginia, ss:

I, Micajah Woods, Commonwealth's Attorney for Albemarle County, Virginia, being duly sworn depose and say that I received the appended letter addressed to me, under date July 3, 1897, in October, 1897, that the said letter is in the handwriting of John Armstrong Chanler and signed by John Armstrong Chanler.

MICAJAH WOODS.

Sworn to before me this 12th day of July, 1905.

JOHN W. FISHBURNE,
Notary Public for the County of Albemarle, in the State of Virginia.

My term of office expires September 19th, 1906.

JOHN W. FISHBURNE,
Notary Public, Albemarle Co., Va.

STATE OF VIRGINIA,
County of Albemarle, To wit:

I, W. L. Maupin, Clerk of the Circuit Court of the County of Albemarle in the State of Virginia, the same being a Court of Record, do certify that John W. Fishburne, whose genuine signature is affixed to the foregoing and annexed certificate was at the
304 time of signing the same a Notary Public in and for the County and State aforesaid duly commissioned and qualified according to law and authorized to take proof and acknowledgment of deeds and other instruments of writing.

His commission expires 19th day of Sept., 1905.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court this 12th day of July, 1905.

[SEAL.] W. L. MAUPIN, *Clerk.*

STATE OF VIRGINIA,
County of Albemarle, To wit:

I, John M. White, Judge of the Circuit Court for the County of Albemarle, of the State of Virginia, do hereby certify that W. L. Maupin, whose name is affixed to the foregoing certificate dated the 12th day of July, 1905, is the Clerk of the Circuit Court for the County of Albemarle, in the State of Virginia, which Court is a court of record, and the signature affixed to the said certificate is that of the said W. L. Maupin, and genuine, and the seal thereto affixed is the seal of said Court, and the said Clerk is duly qualified to act.

Witness my hand this 9th day of October, 1911.

JOHN M. WHITE,
Judge of the Circuit Court for the County of Albemarle, in the State of Virginia.

STATE OF VIRGINIA,
County of Albemarle, To wit:

I, W. L. Maupin, Clerk of the Circuit Court for the County of Albemarle of the State of Virginia, do hereby certify that Hon. John M. White is to me personally known, and that I am familiar with his signature and know the signature subscribed to the fore-
305 going certificate to be that of the Hon. John M. White, Judge of the Circuit Court for the County of Albemarle, in the State of Virginia, and to be genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, this 9th day of October, 1911.

[SEAL.] W. L. MAUPIN, *Clerk.*

"The Society of The New York Hospital,"
White Plains, New York.

JULY 30/97.

Hon. Micajah Woods, "Commonwealth's Attorney," Charlottesville, Albermarle County, Virginia.

MY DEAR CAPTAIN: You will possibly be surprised to hear that I am not Abroad, as is generally thought; but am confined, without due process of law, in a New York Private Insane Asylum: whither I was brought by force, against my expressed will: having been arrested by two officers in plain clothes, on an Order from a Judge of The Supreme Court of The State of New York.

You will pardon the length of this letter when I say that I wish to employ you as Assistant Counsel, with Senator John W. Daniel as Leading Counsel, in a Habeas Corpus Proceedings which I wish instituted without delay. I enclose a Certified Copy of my "Commitment Papers" which I suggest that you defer reading, until you have finished this letter; as they are a tissue of perjuries from be-
306 ginning to end, and this letter will point out and prove the said perjuries in their order.

Before going into the "Commitment Papers" I shall give you a short account of what led to my present predicament.

I have been on unfriendly terms with my family—my brothers and sisters—for a long time. It is not necessary to go into the causes which led to this state of affairs except to say that they are partly business, and partly temperamental. The line of demarkation began nine years ago, and has gradually extended ever since. The climax of unpleasantness was reached last October. My youngest sister was then married, and I was to have "given her away." Ill health prevented my presence at the wedding. I had been confined to my bed at my Home—"The Merry Mills" Cobham—for several days before its date and was in bed at the time. The wedding took place at my sister's Home on the Hudson River. I sent a note by a special messenger, explaining my inability to be present, and also, bearing a handsome present from myself to the bride. The messenger arrivd at my sister's Home the day before the wedding. As there were four other brothers of the bride present at the wedding I felt that my absence would not throw any difficulties in the way of "giving her away."

It seems that my absence from that wedding was the main cause of my present incarceration in a Mad House.

About a month later one of my sisters—with whom I was on better terms than the other brothers and sisters—while lunching with me during one of my business trips to New York, said,
307 touching my absence from the wedding, that the family were not put out at my absence from the wedding—they simply considered me crazy.

I did not pay much attention to this—thinking it a species of joke, which I had grown accustomed to from years of hearing. For whenever, in the course of an argument with any of my brothers or sisters I said anything which they found difficult to combat, their usual reply was "You're crazy."

You must excuse my touching upon such a seemingly unimportant matter, but in crime nothing is unimportant—and you will see, before finishing this letter, that a crime has been committed against the liberty and the reason of a citizen of the sovereign State of Virginia—myself.

The next complication of the already severely strained relations between "the family" and myself occurred in December last. I was still detained in New York on the business trip before alluded to At a Directors' meeting of The Roanoke Rapids Power Company—of Roanoke Rapids, North Carolina—held in New York last December, a most violent altercation arose between my brother Mr. Winthrop A. Chanler and myself. The upshot of it was that he wrote me a letter next day refusing to speak to me or have any further communication with me except in writing or through third parties. As this brother had struck me some years ago, and had quarrelled violently with me frequently since, the above communication did not surprise me. Mr. Winthrop A. Chanler is one year my junior, and was Director with me in The Roanoke Rapids Power Company.

308 I accepted his proposition, and sent a representative next day to say to him that I did so. I also notified him that I should send a representative to go over the books of my Father's Estate of which he was an executor. This Estate has not furnished but two accountings in ten years. I do not suspect my brother of wilful mismanagement, but I do suspect the lawyers he employs, to do the work of investment etc. for him, of investments which are more to their own interests than that of the said Estate. My brother agreed to my proposition and I thought no more about it. About this time I returned to Virginia. I had arranged my business affairs before leaving so as to allow me to take at least two months' rest.

I must tell you that for some years I have been carrying on investigations in Esoteric Buddhism. You must not imagine from this that I am not a Christian, for I am a Communicant in the Episcopal Church. My investigations were entirely scientific in their nature, and totally free from any tinge of religion. They supposed a state of mind open to impressions and free from prejudices. I am not going to bore you with a lecture on Esoteric Buddhism, and shall dismiss the subject.

In the latter part of February last I received a telegram from my friend Mr. Stanford White proposing to visit me in company with a mutual friend. As I was on rather unfriendly terms with Mr. White, owing to an abusive letter he had recently written me, I did not look forward to a visit from him with pleasure. I therefore sent him a telegram to say that I was not well enough to see

309 him. A few days later Mr. White walked in on me in company with a physician.

I shall not attempt to picture my surprise. Let it suffice to say that I was struck dumb.

Mr. White hastily excused his intrusion, and implored me to accompany him to New York for a plunge into the Metropolitan whirl. As I had some business which needed my attention in New York I consented. I stopped at the Hotel Kensington, Fifteenth Street and Fifth Avenue, where I have been in the habit of putting up, on my business trips to New York. A day or so after my arrival, and while immersed in my business affairs, the physician who had accompanied Mr. White to Virginia presented himself in my rooms followed by a stranger, whom he introduced as an oculist.

The reason he gave for breaking in on my privacy was the intense desire, on the part of his friend the oculist, to examine my eyes. I might say here incidentally that during my rest at home in Virginia my eyes had undergone rather a remarkable change. Their color having changed from brown to gray. I shall resume that subject later, and shall merely say that after criticizing Dr. Eugene Fuller, the physician who had accompanied Mr. White, to my home in Virginia, rather severely, for bringing a stranger into my rooms without asking permission, I allowed Dr. M. Allen Starr—the oculist—to examine my eyes. Dr. Starr took a lens from his pocket and, asking me to go to the light, examined my eyes attentively. He unhesitatingly pronounced them gray in color.

I may as well reopen the subject of the change of color of my eyes.

310 You may have noticed that my eyes were light brown. I say, "may have" for that assumes two things—first that you are free from that not unusual affection, color-blindness—second that you have the rather unusual powers of observation demanded by my assumption that you noticed my eyes at all.

At all events, they were light brown. The extraneous and corroborative evidence of this fact is the description of Dering's eyes, on page thirty-nine of the latest edition of "The Quick Or The Dead" which I enclose:

Dering having been sketched from me—I allude to the features of course, the occurrences in the book being entirely imaginary. I have the Princess Troubetzkoy's word for this: it is also a matter of almost common knowledge; the New York World having published an article on the Princess Troubetzkoy—in February, 1896, if I remember rightly—which quoted as descriptive of me the passage above referred to on page thirty-nine of "The Quick Or The Dead;" and the writer of the World article vouched for its correctness, as a description of my personal appearance, in the article itself. You will observe that Dering's eyes are described as "the color of Autumn pools in sunlight." I need not say to a Virginian that the color of Autumn pools in sunlight is brown. A sparkling or bright brown. The pools meant are the deep quiet places in streams into which the dead leaves fall, covering the bottom and giving a dark brown appearance to the water, which is lightened or brightened when the sun plays upon the pool.

311 So much for what the color of my eyes was before they changed. Their color now is a dark gray. As authority for this statement I have the testimony of every physician who

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has examined them—and there have been three besides that of subordinates in this establishment, whose opinion as to the color of my eyes I have asked. You must excuse my dilating upon so seemingly unimportant a subject as the color of my eyes; but I assure you it is far from unimportant in this case for the first count in the indictment against my reason, in the "Commitment Papers," made by the "Medical Examiners In Lunacy" is to the effect that I am insane because I say that my eyes have changed color; both said "Medical Examiners In Lunacy" having freely admitted that my eyes are undeniably gray. Apparently they hope to prove that gray has always been the color of my eyes.

The next step in the proceedings was a nocturnal visit from Dr. M. Allen Starr, the oculist, accompanied by another doctor, whom I had never seen, and two unknown men. Dr. Starr pushed his way into my rooms, followed by the strange doctor, unannounced. The two unknown men remained outside my door. He then briefly informed me that he (Dr. Starr) was a professor of Nervous diseases in a New York college and that I was insane. He went on to say that he had come to take me away—he omitted to state where—immediately—that I must get up at once (I was in bed at the time) that resistance on my part would be useless as there was another doctor—the said strange doctor—in the next room besides two other men—the said unknown men—outside my door.

312 It is not necessary for me to repeat my reply. I shall simply say that I very quietly, but at the same time effectively, refused to obey Dr. Starr's orders. I succeeded in convincing him, without the slightest show of force, that he had not brought enough men with him to carry me off that night.

The next afternoon two policemen in plain clothes presented themselves at my hotel with the "Commitment Papers," a certified copy of which I enclose. I accompanied them without unnecessary discussion to this private Insane asylum.

Before going into the Commitment Papers I shall briefly touch on my life here for the past four months. I was brought here the thirteenth of March. Since that time I have been in solitary confinement in a two-roomed cell. A keeper sleeps in one of the rooms of my cell, and is always with me. When I take exercise in the Asylum grounds the keeper accompanies me. My razors were seized on the ground that it was "the rule of the Institution." The consequence was that I had to be shaved by the Asylum barber, which caused me not only inconvenience but hardship, since my beard is thick and my skin is thin, and no barber has been able to shave me without causing a violent irritation of the skin, a condition which is always absent when I shave myself.

You must excuse the above apparently trivial incident, but you will appreciate the annoyance it is to me to be shaved by the Asylum barber when I tell you that his shaving raises such a rash on my neck that I have limited his operations to twice a week: thus giving the inflammation time to subside—to begin afresh on the next shave.

313 You know from my having had the pleasure of dining at your house, that I am limited to a very abstemious diet—that I am practically a vegetarian.

)SE TO EDGE

You also probably know that I ride a great deal on horseback. It is in fact my favorite and only form of outdoor exercise.

You can well imagine the deleterious effect upon my health resultant from a combination of bad cooking, poor food, and total deprivation of horse-back exercise. Of the cooking I shall simply say that the Asylum cooks cannot even bake bread though they daily attempt it, so that I have been forced to buy crackers to avoid the violent indigestion the half-baked bread caused me. Of the food I shall simply say that it has been so bad that I have come down to a daily diet of baked potatoes, lettuce, fruit and crackers, in order to avoid eating food which is badly cooked, adulterated, or decayed.

In the meantime I am living in a Madhouse. Every "patient" in the building I am imprisoned in is hopelessly insane.

At times some of them become violently homicidally insane: when after yells and struggles with keepers, and a siege with a straight-jacket they are forcibly removed to another ward. Since my arrival two patients were removed for having become "violent" as they called it here.

Nothing prevents a patient from becoming homicidally insane at any time.

In one of such fits of frenzy the lunatic might take it into his head to walk into my cell and attack me. The cell doors are unlocked, and although there is a keeper on watch on my floor he is not always there. To give me warning of the approach of prowling maniacs I put a table against my door at night.

314 This will give you an idea of my surroundings. I think that you will agree with me that they are calculated to drive a man insane.

When you to the "surroundings" the active and sustained efforts of th at doctors to talk me into becoming insane, by declaring to hat I am insane, and attempting to argue me into adm n,—when you consider this you will, I think conclu my nerves and will-power under effective control ir remain sane.

So for my life for the last four months. This is the first opportu y which I have had of posting a letter unbeknown to the authorities here. The rule is, that all letters and telegrams must be sent through the authorities here, who have the legal right to suppress or forward to "The Commission In Lunacy" at Albany, who have again the legal right to suppress or destroy them. You can readily understand that I would not send a letter under such conditions. Hence my having to wait four months to write to you and ask your aid.

The next thing to be considered is the "Commitment Paper." I shall only touch upon that briefly, for it speaks for itself.

In the first place the "Commitment Paper" gives my residence as "Hotel Kensington, New York City." This is false, as my residence since 1895 has been "The Merry Mills," Cobham, Albemarle County, Virginia. "Trow's Directory" of New York City gives my residence Virginia. In "Trow's Directory" for July, 1896, to July, 1897, you will find "John A. Chanler lawyer 120 Broadway h. Va." "H"

stands for house, i. e., home, residence, and "Va." of course stands for Virginia.

315 I have never practised law in New York, but have been a silent partner in the law firm of "Chanler, Maxwell and Philip of 120 Broadway" which firm name you will find a few places below my own in "Trow's Directory" of the above date.

There can be no doubt about my residences being in Virginia, for in 1895 I went to The Commissioner of Taxes' office, in the Stewart Building, corner of Broadway and Chambers Street, and myself wrote, at his request, in the Tax Book a full description of my residence. It is of course there yet. It is to the effect that I was interested in a law firm in New York but that I did not personally practice law in New York, as the business I had charge of was a manufacturing one in Roanoke Rapids, North Carolina, and that my home, where I lived, was at Cobham, Albemarle County, Virginia. The object of the above visit was to fix the amount of my personal tax in New York. The amount fixed was $2,500 (twenty-five hundred dollars). This took place in 1895 and neither my address nor the amount has been changed.

Moreover no better evidence as to my residence could be asked than is afforded by the sworn testimony of the three Petitioners (my brothers, Messrs. Winthrop A. Chanler, Lewis S. Chanler, and my cousin Mr. A. A. Carey) page 3, lines 141 and 142 of the Commitment Paper, where they declare, "Mr. J. A. Chanler has for several months while at his home in Virginia." This should settle any doubt about my residence. It might be well to state before going any farther the probable causes which led to the said brothers' and cousin's wishing to see me declared insane and confined in an Insane Asylum. You will remember the abusive letter writ-

316 ten me immediately after that Directors' meeting of "The Roanoke Rapids Power Company" in December last, by this same brother, Mr. Winthrop A. Chanler, in which he refused to speak to me, or have anything further to do with me, except by letter or third parties. You will also remember that I accepted his terms and informed him that I would have the books of my Father's Estate, of which he was an executor, examined. You must know that there are two executors of my Father's Estate. One of them is Mr. Winthrop A. Chanler and the other is Mr. Lewis S. Chanler. These two gentlemen, who are equally to blame for what I am compelled to believe is innocent but palpable mismanagement of my Father's Estate, join hands in petitioning for my incarceration in an Insane Asylum before I have the opportunity to investigate their management—but two accountings of the management of the said estate having been rendered in ten years.

Furthermore, as I have told you there has, for years past, been no love lost between my family and myself.

When affection is absent, and business interests are present, it behooves the careful man to look about him and see, in seeking for the solution of an obscure action, whether or not it could have been to the parties' business interest to do an, otherwise, incomprehensibly malicious thing.

The business end of the present situation throws a bright light upon it.

Under my Father's Will I enjoy an eighth of the income of his estate during my life. At my death without issue my said share reverts to his estate. Should I leave issue my said share
317 would go to said issue. It is therefore evidently to the business interest of my family to prevent my marrying by locking me up for life in an Insane Asylum, if possible: and if that is not possible the next best step towards safeguarding their business interests is to throw, if possible, an insurmountable obstacle in the way of my marrying. No more insurmountable obstacle in the way of marriage could be imagined than insanity.

Granting that I get out of this Asylum the stigma of having been confined in it would stick to me through life. You need not necessarily infer that I have any intention of marrying, only I like to retain the privilege of the option.

Furthermore. There is every human probability that were I to be confined in these surroundings long enough my mental and physical forces would succomb to the hideous moral strain and confinement. When this took place my family would be appointed a commission to administer my Estate, I being by that time a bona-fide—instead of what I am at present a bogus—maniac.

I have an Estate which bids fair to be very valuable in time. Certain portions of that Estate are represented by large stock holdings in the "United Industrial Company" and the "Roanoke Rapids Power Company." These said holdings could be sold to third parties with the understanding that they were to be bought back at a certain figure by one or more of my brothers or sisters, who already hold stock in the said Companies and who I know would like to increase their holdings—once the said "Family Commission" for my Estate came into being.

Furthermore. Nothing would be easier than to break my
318 Will on the ground of insanity, now that I have been declared insane, and confined as an insane person in an Insane Asylum. That my family would make every effort to break my Will I make no doubt. For two reasons. First because of their unfriendly attitude towards me for years past. Second because they are in a position to know that I left all of them out of my Will, except one sister, and that—strictly confidentially—my largest legatee is The University of Virginia, for which—on account of its own character and that of Thomas Jefferson—I have a high admiration.

Furthermore. The "United Industrial Company" of which I am the controlling stockholder, and of which I was a Director last December, held its Annual Meeting for the election of officers for the ensuing year, the first week in January last. My brother, Mr. Winthrop A. Chanler, had been elected, by my votes, as President of the said Company the preceding year at a salary of two thousand dollars per annum. After receiving the abusive letter, before alluded to, from him last December, I decided to elect myself President of the United Industrial Company in his place. His said letter to me having specifically stated that he would not speak to me again, or

hold any communication with me except by letter or third parties, had rendered it a business impossibility for me to elect as President of a company a man who was not on speaking terms with myself; who besides being the controlling stockholder was one of the Board of Directors.

I had it delicately conveyed to Mr. Winthrop A. Chanler,
319 by third parties, some days before the election, that it would be as well for him to resign his Presidency of, as well as his Membership on the Board of Directors, of The United Industrial Company. This he promptly did, and at the ensuing election—January/97—I, voting by proxy, for I was at home in Virginia at the time, elected myself President of The United Industrial Company in his place, together with a Board of Directors of my own choosing, to whom I had previously transferred enough stock in the Company to render them eligible under the law, to hold office.

It might be well for you to bear in mind that the above revolutionary and delicate stock manipulation was conceived and carried out by an alleged maniac. For the conception of the plan took place on receipt of Mr. Winthrop A. Chanler's said abusive letter about the middle of December last, and the carrying out occurred in January '97. Whereas, my present attack of alleged insanity began, according to the Commitment Papers, November, 1896.

Mr. Winthrop A. Chanler is heavily interested in The United Industrial Company. The said Company's factory is situated in the town of Roanoke Rapids, North Carolina. He has put fifty thousand dollars into the said Company. Finding himself checkmated, as described, he apparently out of revenge and interest in his stock, set about to get the control of the said Company, and thereby of his said stock, out of my hands. It was a desperate game, but fifty thousand dollars is a large stake. It is necessary for me to make a short digression here in order to give you all the threads of the plot.

320 Mr. Stanford White now comes on the stage again. He had intimated to me last February in New York through a third party that he thought I should take an extended rest from business, and that it would give him great pleasure if I were to make him and Mr. Augustus St. Gaudens—the distinguished sculptor and a friend of mine and Mr. White's most intimate friend—my powers of attorney to transact all my business and look after all my affairs.

Such devotion touched me.

Here was the spectacle of two rich, successful, and eminent men willing to take upon themselves for friendship's sake the work and worry of all my affairs. I thought that there might be something behind their request, but I did not suspect either of them of selfish motives.

I declined the services of Mr. St. Gaudens, but accepted those of Mr. Stanford White. My reason for so doing was that business was extremely dull and I thought if Mr. White wanted to help me run my affairs there would be no harm in letting him do so, I being able to revoke the power of attorney at any time, and being able to supervise his work meanwhile. So I gave him a limited power of

attorney. I also at his request resigned from the Board of Directors of The Roanoke Rapids Power Company to make room for Mr. White on that Board. Mr. Winthrop A. Chanler's presence on said Board would have made the transaction of business difficult owing to his disinclination to talk to me, whereas Mr. Stanford White is one of his closest friends.

I also resigned from the Presidency of the United In-
321 dustrial Company, Mr. Stanford White, thereby becoming a Director of said Company, and one of my previously chosen Directors being elected to fill my place as President.

All this having been arranged I was about to return to Virginia to await the arrival of The McKinley Wave of Prosperity when I was arrested and brought here.

As I said it appears that my brother wished to prevent my making use of the power I have attained in the United Industrial Company by locking me up in an Insane Asylum. He achieved his end.

Lastly. I hold a note of the United Industrial Company for about fourteen thousand dollars. This note is past due. It would greatly embarrass Mr. Winthrop A. Chanler were I to demand its payment. How much has the fear that I would do so had to do with his locking me up? The said amount of the note was advanced by me to the said Company. He owns fifty thousand dollars' worth of the said Company's stock, and others of my immediate family own about twenty-five thousand dollars worth of the same stock. It would pay them to join forces and repay me their pro rata share of my overdue advance to said Company, rather than have said note go to protest and legal proceedings ensue.

Cheapest of all however is to lock me up out of reach of "protest." I think I have given you enough of the business end of this conspiracy for you to see clearly that it was to my brother's, Messrs. Winthrop A. and Lewis S. Chanler's (the co-trustee of my Father's Estate) interest, as well as to that of my whole family, that I should disappear for an indefinite period. Add to their business in-
322 terest the strong personal interest of jealousy and dislike, and you have a powerful working incentive.

As for Mr. A. A. Carey's motive—he is the third Petitioner—for wishing to see me declared, and locked up as, a lunatic that is easy to find. I have had a series, of violent altercations with him, stretching over a period of more than ten years. In fact I may say that he is my oldest, if not my most intelligent enemy. The last row I had with him was in 1894 and I haven't so much as laid eyes on him since.

We can now return to the perusal of the Commitment Papers.

You will remark that the Three Petitioners Messrs. Winthrop A. Chanler, Lewis S. Chanler, and A. A. Carey swear that the acts alleged to have been committed by me in Virginia and in New York are of their own knowledge. For you will note on Page Four of The Commitment Paper line 165 to line 168 "W. A. Chanler Lewis S. Chanler and A. A. Carey being duly sworn, depose and say that they have read the foregoing petition and know the contents thereof, and that the same is true to the knowledge of deponents, except as to

the matters therein stated to be alleged on information and belief." As there are no "matters therein stated to be alleged on information and belief" the matters therein alleged must therefore all be "true to the knowledge of deponents." In swearing that the said matters were "true to the knowledge of deponents" the said deponents Messrs. Winthrop A. Chanler, Lewis S. Chanler, and A. A. Carey thereby perjured themselves, for not one of the said de-
323 ponents has ever crossed the threshold of my "home in Virginia" where part of the alleged acts were sworn by said deponents to have been committed; and not one of the said deponents saw me later in New York, where the remainder of the said alleged acts are sworn by said deponents to have been committed.

One of the said deponents Mr. Lewis S. Chanler was in Europe just prior to the 10th of March, but having sailed from England on a cable's notice reached New York in time to swear on March 10th to alleged acts committed by me while he was abroad and on the Ocean.

The said deponent Mr. A. A. Carey I have not seen since 1894.

The said deponent Mr. Winthrop A. Chanler I have not seen since that Directors' Meeting about the middle of December, 1896.

So much for the veracity of the three Petitioners Messrs. Winthrop A. Chanler, Lewis S. Chanler, and A. A. Carey. Now let us examine that of the two "Medical Examiners In Lunacy" namely Dr. M. Allen Starr (for our friend the Oculist turns out to be an Examiner in Lunacy) and Dr. Eugene Fuller. If you turn to Page Five of the Commitment paper you will see under the caption "Certificate of Lunacy" and on line 200 "Patient resides at Kensington Hotel N. Y. County of N. Y." Now turn to Page Seven of the Commitment Paper and on lines 275, 276 and 279 you will find "That the facts stated and information contained in this certificate are true to the best of my knowledge and belief." Then follow the signatures of M. Allen Starr M. D. and Eugene Fuller M. D. and then line 279 "Severally subscribed and sworn to." Drs. M. Allen Starr,
324 and Eugene Fuller therefore swore that to the best of their knowledge and belief I resided at the Hotel Kensington New York notwithstanding the fact that my said brothers and said cousin the Petitioners swore of their own knowledge that my residence was in Virginia—their words were e. f. lines 141-142 "Mr. J. A. Chanler has for several months while at his home in Virginia"—and also notwithstanding the fact that Dr. Eugene Fuller found me at my "home in Virginia" when he presented himself there in company with Mr. Stanford White last February; and Dr. M. Allen Starr was aware of the said visit on the part of Dr. Fuller to my "home in Virginia," said visit having been touched on before Dr. Starr in my presence. There could therefore have been no possible doubt in either Dr. Fuller's or Dr. Starr's mind about my residence being in Virginia. On top of their own knowledge, as above described, and on top of the corroboration of it in Trow's Directory (which they probably consulted for—touching my occupation—they say on line 202 "occupation lawyer") which gives my residence Virginia—on top of and in spite of all this both Dr. M. Allen Starr and Dr. Eugene

Fuller swear that to the best of their knowledge and belief I reside at the Hotel Kensington. This looks to me like perjury. How does it strike you? At all events it is so remarkable a divergence, as sworn testimony, from the sworn testimony, on the same subject, on the part of the said Petitioners that it badly needs investigation.

The remainder of the statements in the Commitment Paper, both on the part of the said Petitioners, and on that of the said
325 Medical Examiners in Lunacy is on a par with the above instances of false swearing.

On the maxim "false in one thing false in all" unnecessary for me to take up your time to deny the false allegations on the part of the said Petitioners and on that of the said Medical Examiners in Lunacy as they "drag their slow length along." I shall content myself in making a general denial to all allegations which go to show me of unsound mind.

Such trifling allegations as that I have limited myself to a peculiar diet, or that I have secluded myself, or that I burnt my hand (in an experiment by the way) I demur to. I also demur to the allegation that I frequently went into a "trance-like state." This was done in the presence of Drs. Starr and Fuller and at their request in order that they might note the action of a "trance-like state." Their request to me was based on purely scientific grounds, and I granted it on the same grounds. There was never any question of medical advice. Drs. Fuller and Starr each pretended interest in "trance-like states" and Dr. Starr pretended to some knowledge on the subject.

You will remember that I said that I had for some years been carrying on investigations in Esoteric Buddhism. The said "trance-like state" is one of the means I from time to time employ to that end. As I said before I am not going to bore you with a lecture on Esoteric Buddhism, and shall drop the subject with the remark that I have neither injured myself nor anybody else by my said investigations.

To all allegations to the effect, or tending thereto in the
326 remotest degree, that I have a delusion or delusions of any kind or description I make an unequivocal denial.

The allegations that I have exposed myself to cold, neglected or injured myself, I unequivocally deny.

The allegation that I threaten people I unequivocally deny.

The allegation that I was emaciating I unequivocally deny.

The allegation that I was confined (in an institution for the Insane) in Neuilly, Paris, France, I unequivocally deny. "New Paris" is a remarkably ignorant clerical error. I unequivocally deny each of the following allegations, which for brevity I shall designate by the numbered line they fall on. Namely, Line 142 from the word "been" to "manner." Line 144 from "he has" to the end of 150 inclusive. Line 187 to line 191 inclusive. Line 205 to line 212 inclusive. Line 215 and line 216 with the exception of "is armed" which has been stretched to distort the very natural fact that I had a revolver in my room, which I always travel with. Line 218 and line 219. Line 244 to line 249 inclusive, except that I maintain

that my eyes have changed from brown to gray. Line 252, line 261 inclusive, except that I frequently went into a "trance-like state" at the request of Drs. Starr and Fuller, and that I sometimes talked French when in the trance-like state. Line 262 to line 264 inclusive. Line 269, line 270, line 271. Line 273 and line 274. The "valet" in question denied to me in this cell the foregoing, in the following inelegant but explicit language, to wit, "I didn't
327 describe no 'gradual development' of no 'delusions' for I didn't see none." I demur to line 272 which says, "he has become suspicious of his friends, has secluded himself" on the ground that I showed keen instinct in suspecting my friends. My "friends"—so-called—family and "friends" ran me in here. Had I been more suspicious of "friends" I should not be in the hole I occupy at present.

I think that you will agree with me that the frequently recurring word "line" in the foregoing paragraphs should read "lie."

So much for the allegations of the said Petitioners and said Medical Examiners In Lunacy against my reason. Now, let us see how far the allegations of the Honorable Henry A. Gildersleeve, Justice of the Supreme Court of the State of New York, that I am a maniac with suicidal as well as homicidal tendencies—the only conclusion to be drawn from his allegations—remember the said Honorable Justice has never laid eyes on me—line 187 to line 191 inclusive, and line 345 and line 346—let us see how far said allegations have been borne out by the facts which have transpired since my arrest March 13th.

I made no resistance to the police who arrested me at the Hotel Kensington and brought me here. I gave them cigars and we smoked and chatted amicably together on the way here.

During the four months that I have been imprisoned here I have not committed a single act which in the remotest degree resembled either violence or insanity. I have threatened nobody during that time. I have frequently warned the authorities here that I would seek legal redress for the false imprisonment that I was under-
328 going, and that I shall hold them legally responsible for their share in it.

The above statement is borne out by each of my keepers—one is on duty when the other is off duty—one of whom has been eleven years a keeper in Insane Asylums, and the other has been three years in this Institution. Their duty is to sleep in my cell, and be with me and watch me when I am awake, and report daily to the authorities here all that I do or say of any nature whatever. These reports are taken down in writing by the authorities and are "charts." It is on these "charts" that the progress or retrogression of a "patient's" condition is based. The authorities—the doctors i. e.—may see the "patient" for five or ten minutes each day, the keeper sees the patient 15 hours out of the 24. It is in fact the keepers, who are expert trained nurses, and not the doctors who understand most about the character, habits, and mind of the patient, in the ratio of 15 hours to 10 minutes per days of diagnosis and atten-

tion. Neither of my keepers has ever seen me do nor heard me say anything which was in the least irrational or unbalanced. Each of them consider me as sane as any man, and they are willing to so testify.

Why do the doctors here not discharge me as sane? Why did they not discharge me as sane after a week or two of observation? Because the duty of the doctors in the pay of this Private Insane Asylum appears to be to hold anybody placed here, whether sane or otherwise, long enough for the owners of this Asylum to make a good profit out of him—or her. Times are hard. It is not every day in the week that the Proprietors of this Asylum can capture a
329 prisoner who can be made to pay one hundred dollars a week ransom until released. As you see by the statement on the cover of the commitment paper, that is the exhorbitant sum I am forced to pay, in exchange for, a two room cell, a keeper—whose salary is not over thirty dollars a month with board and lodging—and baked potatoes. There is no reduction here; I am forced to pay for what I don't want, whether I reject it or otherwise. You can readily grasp the threads of this daring conspiracy, from your intimate knowledge of the ways of criminals, gathered from your long and successful pursuit of them as Commonwealth's Attorney.

It is not necessary therefore for me to point them out to you.

Let it suffice to say that the ground-work of the Commitment Papers is an amalgam of avarice, malice, and mendacity.

That the only truthful statements in the Commitment Paper are such as in nowise reflect on my reason or sanity. That I was accused by persons who were not in a position to know whereof they—not merely spoke but—duly swore. That these said accusers—the said Petitioners—were all and severally on bad terms with me, and had been so for years. That it was to the unmistakeable business interests of two of the said accusers Messrs. Winthrop A. Chanler and Lewis S. Chanler that I should be disfranchised, as an insane person, of my property as well as of my liberty.

That it was to the equally unmistakeable spite and malice of the third said accuser Mr. A. A. Carey that I should end, after years of every description of violent altercation with and opposition
330 to me, in a mad house. That having had a sharp altercation with Dr. Eugene Fuller for bringing Dr. M. Allen Starr into my rooms without warning or permission—to spy on me in company with himself as the result proved—which altercation was the basis for a second one with Dr. M. Allen Starr on the general topic of the morality of the medical profession: in the discussion of which topic I showed such unexpected knowledge of the habits of many members of the medical profession that Dr. Starr after vainly endeavoring to discover the source of my information, earnestly requested me to change the subject: that having had as I say, a distinct altercation with each of the said doctors—who later were metamorphosed into the said Medical Examiners In Lunacy—the motive of the said followers of the Healing Art, in wishing to see their late antagonist declared a maniac, is not far to seek. I might add that I have not the faintest tinge of prejudice against Surgeons as well as such Physi-

cians as are skilful and honest: that there are numbers of Physicians who are neither one nor the other, it has been my Fortune to discover. The proof of the above lack of prejudice against physicians is that I have spent money in giving aid to deserving medical students to complete their education.

The motive which led the Honorable Henry A. Gildersleeve, Justice of The Supreme Court of The State of New York to overlook the grave discrepancy displayed in the Commitment Paper in the spectacle afforded by two conflicting sworn statements on the same subject—namely the sworn statement of the said Petitioner as to my home being in Virginia, followed by the sworn statement of
331 the said Medical Examiners in Lunacy as to my home being in Hotel Kensington New York—the motive which led the Honorable Justice to permit the said spectacle to pass unchallenged I shall leave you to surmise. This Institution is very rich. The motive which led the said Honorable Justice to dispense with "Personal Service" on a mere ex parte statement I shall leave you to surmise. The motive which led the said Honorable Justice to omit to direct "Substituted Service"—clearly the alternative, when "Personal Service" is dispensed with as implied by the Law which reads "The Judge to whom the application (for commitment to an Insane Asylum) is to be made may dispense with such personal service, or may direct substituted service to be made upon some person to be designated by him" c. f. printed cover of Commitment Paper, containing said law, lines 53 to 55—the motive which led the said Honorable Justice to the above omission I shall leave you to surmise.

You will note, on studying the extracts from chapter 545 of The Laws of 1896—given on the cover of the Commitment Paper—the tortuousness thereof. For instance take section 62. This said section contradicts itself. It says—line 49 and line 50—"Notice of such application (for commitment to an Insane Asylum) shall be served personally at least one day before making such application upon the person alleged to be insane."

That is no more than fair—is it? Somebody takes it into his—or her—head: or for certain reasons, pretends to take the notion into his—or her—head that you are crazy. It seems fair that you
332 should be allowed to confront your accuser—a common murderer has that privilege—and be heard in defence *to* his—or her—allegations, before being summarily arrested, like a malefactor as I have been, and put behind bars without a trial, for an indefinite period, perchance for life. Well the above wholesome specimen of boasted Anglo-Saxon Justice, Law, Freedom, etc., is at once wiped out and rendered utterly nugatory by what follows on lines 53 to 55 inclusive. After the above bold bluff at Justice—after saying "Notice of such application (for commitment to an Insane Asylum) shall be served personally at least one day before making such application upon the person alleged to be insane" the Law dodges Justice and sneaks out at the following carefully prepared loophole (line 53 to line 55 inclusive) "The Judge to whom the (said) application is to be made may dispense with such personal service, or may direct substituted service to be made upon some person to be designated by

him." The Judge has it all his own way. Get at the right Judge and it's plain sailing. There are two explanations of the above Law. One that it is the outcome of "Manipulated Legislation" at Albany by Corporations dealing in Bogus Maniacs, who wish to legislate in order to continue the said Monopoly In Maniacs, which the Laws of the State of New York at present foster and support.

The other explanation for the above iniquitous law's smirching the Statute Books of the Empire State is that it is a product of the late Republican Legislature.

In other words a citizen of the State of New York can be
333 condemned and imprisoned without a hearing. All that is required to deprive a citizen of The Empire State of his liberty is one or two false witnesses, two dishonest doctors, and a Judge who will swallow conflicting sworn statements -ithout a qualm.

No defence is allowed the accused. It is truly an Empire State. I sometimes wonder, as I look through the bars of my cell, how such things can be outside the Russian Empire State. Fortunately for myself however I am no longer a citizen of The Empire State but am and have been since 1895 a citizen of the Sovereign State of Virginia; which title to Sovereignty I expect to see Virginia make good by protecting her citizen, recapturing him, as it were, from the neighboring and supposedly friendly State of New York, by invoking the arm of the Federal Courts.

An interesting example this showing how the theory of States Rights can be shown to rest for support on Centralization.

How one Sovereign State can be prevented from stealing the citizen of another Sovereign State, and thereby the money accruing from his personal taxes, by the robbed State's applying to the Common Residuary of all extraneous Sovereign Rights—the Central Government—to demand restitution from the robber State.

So much for the equity surrounding my present predicament.

Now let us glance at the law. You will readily comprehend with what meagre means toward forming an opinion I am at present surrounded.

The sum total of my law library consists of The Constitution of the United States, in the back of a Dictionary, and selections from
334 a list of Legal Maxims in the same book. The Constitution of the United States says Article III Section 2. "The Judicial Power (of the Federal Courts) shall extend to Controversies between a State and citizens of another State; to Controversies between citizens of different States" I am a citizen of Virginia.

Should I have a Controversy with the State of New York, the controversy being between a State and a citizen of another State, the Federal Courts could alone have jurisdiction over the controversy.

The question of a man's Sanity, covering as it does his Liberty, and his property, is surely a controversy of the first importance.

I therefore—having had my sanity attacked by a State Court (The Supreme Court of the State of New York) have a controversy with the State of New York. Said controversy must be tried therefore in the Federal Courts. Furthermore, I have had my sanity attacked by Doctors M. Allen Starr, and Eugene Fuller. They

being citizens of the State of New York, and I being a citizen of Virginia said controversy must be tried therefore in the Federal Courts.

Furthermore, I have had my sanity attacked by Messrs. Winthrop A. Chanler, Lewis S. Chanler, and A. A. Carey. I being a citizen of the State of Virginia, and they, the Messrs. Chanler, being citizens of the State of New York, and Mr. Carey being a citizen of the State of Massachusetts, said controversy must be tried in the Federal Courts. Furthermore, I have been restrained of my liberty by "The Society Of The New York Hospital" the legal title of the Corporation which owns the Asylum in which I am at present confined. The said Corporation being a New York affair, and
335 I being a citizen of Virginia, said controversy must be tried therefore in the Federal Courts. The above actions are for the Future. For the present all I ask is liberty. It is not necessary for me to tell you how to proceed to obtain that end. I will only caution you, in closing, not to write, or telegraph me, or to mention to a living soul save Senator Daniel (to whom of course you will show this letter) anything connected with me or my whereabouts. It has been given out by certain interested parties that I am in Europe (I find that that is the stock term used when a man is sent here) let it be so considered as long as possible. Speed is essential. For I have been given to understand that when my unknown term of imprisonment here is ended I am to be shipped to Europe. As to what point I was not informed, most probably to an English Private Insane Asylum. That would probably do the business for me, as there they are even more brutal in their treatment of "patients" than here.

Above all I warn you and Senator Daniel to be on your guard against all the doctors here. They are as smooth spoken and deceptive in their manner as any confidence men you ever encountered.

The name of the Superintendent is Dr. S. B. Lyon. The Asylum is commonly called "Bloomingdale" but that is merely a fancy name. Its legal title is, "The Society Of The New York Hospital," a private corporation having its offices and Hospital on 15th Street, a few doors West of Fifth Avenue, New York.

As you may gather from my letter I mean war.

No compromise with any man, Institution, or State, which
336 has been in the remotest degree connnected with this rascally conspiracy. Listen to nobody who endorses what has been done.

The more friendship such a man professes for me, the more profound should be your distrust of him. The manner of proceeding to procure the writ of Habeas Corpus I leave entirely in Senator Daniel's and your, hands.

Speed and Secrecy are the Watchwords. The moment it leaked out that any effort was being made for my release that moment would probably end my imprisonment here, and begin it in a closed carriage on my way by night, bound and gagged to Long Island Sound—8 miles off—where a private tug boat could convey me to an Ocean Steamer at New York, or a sailing vessel bound 'round "The Horn." I can assure you that outlawed as I am my position is one of considerable uncertainty—not to say danger. It

is unnecessary for me to say that nothing but the most unexpected and dire necessity could induce me to go before a "Sheriff's Jury," the usual manner, in the State of New York, of carrying out a Habeas Cropus Proceedings for a man who has been declared insane by a Judge. I object to this for three reasons. First, because it is not the right way to go about it. I am not a citizen of the State of New York, and therefore the "Sheriff's Jury" does not apply to my case.

Second, because I do not desire the notoriety consequent upon such a proceeding.

Third, because my family are most anxious that I should go before a "Sheriff's Jury" in the desperate hope that the said jury would believe what they, and the doctors, said about me. In
337 which case the Jury would pronounce me insane, and hand me over to the custody of my family, who could then apply for and receive into their hands my property and the management thereof—under the name of a Commission.

The above line of action (going before The Sheriff's Jury) has already been suggested to me by an emissary of my family, who told me that that was the only way for me to get out—hoping thereby that I would choose it. The best way, it seems to me, would be to have Senator Daniel, and yourself, go before the Attorney General in Washington, and have him issue an order to the United States District Attorney in New York City, to go before a Federal Judge in New York City with Senator Daniel and yourself, and procure from said Federal Judge a Writ of Habeas Corpus, on the double ground that I am not insane—show portions of this letter to the Judge as proof of my sanity, on the Maxim "To write is to act" if I write sanely I act sanely—and that if I were insane the action should have been begun in a Federal, and not in a State Court, owing to my being a citizen of Virginia, and not of New York, and that my commitment by a State Court is therefore illegal and must be set aside.

I merely mentioned this with the full knowledge of its being—owing to the circumstances—a "horseback opinion." I don't dwell on the irregularity of the commitment—the conflicting sworn statements—the suggestions of fraud—the fact that the name of the Institution in which I am is therein given as "Bloomingdale
338 Asylum" whereas the Commitment Paper distinctly states directly under it on line 156, "It is essential that the official title of the institution should be correctly inserted" and whereas the official title of said institution is not "Bloomingdale Asylum" but "The Society Of The New York Hospital." The same irregularity is repeated on the cover of The Commitment Paper, where the title of the said institution is again given as "Bloomingdale."

These, with the rest of the legal aspects of the case I leave entirely in Senator Daniel's, and your experienced, hands. If necessary, let a Federal Judge examine into my Sanity for a change.

Examination at the hands of a distinguished and honest man is the last thing that I would avoid.

If necessary, let us begin de novo, only in a legal, equitable, and

honest manner. No more medical spies, no more Star Chamber Judges, no more summary arrests.

We are not in Cuba nor, as yet, in the State of New York does Martial Law prevail.

As I am allowed no money—I haven't seen a dollar bill in months—and as I am not allowed to communicate with my New York office, I am unable to send you and Senator Daniel cheques for retainers and disbursements. So I must ask you to explain the situation to the Senator, and tell him that I must ask him to charge all travelling expenses and disbursements to my account until I am liberated.

The same I request of you.

Hoping to see you and the Senator enter my cell, before
339 many days, with an officer bearing a Writ of Habeas Corpus from a Federal Court,

Faithfully yours,

JOHN ARMSTRONG CHANLER.

P. S.—Please bring this letter with you as a résumé of my case.

J. A. C.

340 *Judgment.*

United States District Court, Southern District of New York.

Law. 60-81.

JOHN ARMSTRONG CHALONER, Plaintiff,
against
THOMAS T. SHERMAN, Defendant.

The issues in this action having been brought on for trial before the Hon. George C. Holt, District Judge, and a jury at a Trial Term of this Court held on the 19th, 20th, 21st and 23rd days of February, 1912, at the Court Rooms thereof in the Federal Building in the Borough of Manhattan, in The City and County of New York, in the State of New York, and the allegations and proofs on the part of the plaintiff having been heard and considered, and the Court having, on motion of the defendant at the close of the case, directed a verdict in favor of the defendant, and the jury having duly found and rendered a verdict in favor of the defendants accordingly.

Now on motion of Evarts, Choate & Sherman, attorneys for the said defendant, it is

Adjudged that the defendant Thomas T. Sherman have judgment against the plaintiff John Armstrong Chanler upon the issues in this action.

Judgment signed and entered this 6th day of March, 1912.

THOS. A. ALEXANDER, *Clerk.*

341 *Assignment of Errors.*

United States District Court for the Southern District of New York.

JOHN ARMSTRONG CHALONER, Plaintiff-in-Error (Plaintiff Below),
against
THOMAS T. SHERMAN (Defendant Below).

Assignment of Errors of the Plaintiff-in-Error, John Armstrong Chaloner.

And now comes the plaintiff-in-error, John Armstrong Chaloner herein, by William D. Reed, his attorney, and respectfully submits and presents and files its assignment of errors complained of and says:

That in the records and proceedings of the Honorable Court in the above entitled cause, on the trial thereof, there is manifest error to the injury and prejudice of the said plaintiff-in-error, John Armstrong Chaloner, and for such error the said plaintiff-in-error assigns the following:

First. That the learned United States District Court, for the Southern District of New York, erred in sustaining the objection of counsel for defendant-in-error, Thomas T. Sherman, to the following question read from the deposition of Amelie Rives Troubetzkoy and put to the said witness by counsel for plaintiff-in-error:

Q. What was the condition of the plaintiff's health during his marriage to you?

342 To which ruling of the learned Court counsel for plaintiff-in-error duly excepted.

Second. That the said Court erred in ruling that the matter of the plaintiff's commitment had nothing to do with the case, and to which ruling of the learned Court counsel for the plaintiff-in-error duly excepted.

Third. That the said Court erred in sustaining the objections of counsel for defendant-in-error, Thomas T. Sherman to the following questions read from the deposition of Amelie Rives Troubetzkoy and put to said witness by counsel for plaintiff-in-error.

Q. Please state what, if any, sickness he had during that period?

Q. What was the condition of his health generally?

To which rulings of the learned Court counsel for plaintiff-in-error duly excepted.

Fourth. That the said Court erred in sustaining the objection of counsel for the defendant-in-error, Thomas T. Sherman, to the admission in evidence on the part of the plaintiff-in-error of a certified copy of the 1897 lunacy proceedings.

To which ruling of the learned Court counsel for the plaintiff-in-error duly excepted.

Fifth. That the said Court erred in sustaining the objections of counsel for defendant-in-error, Thomas T. Sherman, to the follow-

ing questions read from the deposition of Amelie Rives Troubetzkoy and put to the said witness by counsel for plaintiff-in-error.

Q. In the certificate, commencing at line 205, it is stated
343 that there was one previous attack, presumably referring to lunacy, do you know anything about this charge?

Q. In these proceedings, under the statement of facts alleged against the plaintiff, were the following: 1st. That "Mr. J. A. Chanler has for several months while at his home in Virginia been acting in a very erratic manner"—this refers to his conduct presumably for the several months preceding the trial in New York in 1897? Please state whether or not you have any information concerning this allegation?

Q. It is then alleged in this petition in these proceedings that he had limited himself to a peculiar diet—during the period that you knew him and were married to him, please state what, if anything, was peculiar about his diet?

Q. During that period the chief or only peculiarity about his diet was the fact that he was a vegetarian?

Q. It is then alleged that "he gives as a reason for these and other acts that he is inspired by a spirit which directs him;" what do you know of this allegation?

Q. Have you any reason for saying that you can't think of him as having said that?

Q. Did he ever do anything to suggest to you that he had delusions?

Q. Will you please state what was his general temperament—excitable or otherwise?

Q. Is he any more excitable or high strung than the others?

Q. Have you ever heard any rumors that affected his sanity?

Q. It is next alleged that he was confined at Neuilly, near
344 Paris, France, some years ago, for a short time, please state whether or not this is true?

Q. Will you explain what, if anything, could have been a basis for this charge?

Q. Then you state that he was only at Neuilly once and that time to see a friend?

Q. Was he or not, a very energetic man?

Q. In this certificate of lunacy they state that he was excited, armed, threatens people, is dangerous; during the period that you knew him did he or not ever do anything to indicate that he was dangerous?

To which rulings of the learned Court counsel for plaintiff-in-error duly excepted.

Sixth. The learned Court erred in ruling that "it has nothing to do with the case whatever;" that she (Amelie Rives Troubetzkoy) was with him at that time and knows all the facts and circumstances and that that is a false statement in the papers that committed him, that "he was confined at Neuilly, near Paris, France, some years ago for a short time."

To which ruling of the learned Court, counsel for the plaintiff-in-error duly excepted.

Seventh. That the said Court erred in sustaining the objections of counsel for the defendant-in-error, Thomas T. Sherman, to the following questions put by counsel for the plaintiff-in-error, to the witness Pedro N. Piedra.

Q. Was Mr. John Armstrong Chaloner at any time when you were there serving in that capacity with him, an insane person?

Q. Have you attended upon other insane men?

345 Q. How many of them?

Q. What was his physical condition at that time?

Q. Did you have any conversation with the doctor in charge?

Q. About the condition of Mr. Chaloner?

Q. Did you have any conversation with the doctor in charge over there about Mr. Chaloner being heard or examined anywhere?

Q. Did you observe his actions?

To which ruling of the learned Court, counsel for the plaintiff-in-error duly excepted.

Eighth. That the said Court erred in sustaining the objection of counsel for the defendant-in-error Thomas T. Sherman, to the admission of any evidence by the witness Pedro N. Piedra concerning any physical or mental condition of Mr. John Armstrong Chaloner at or about the time of his confinement at Bloomingdale Asylum in May, 1899.

To which ruling of the learned Court, counsel for plaintiff-in-error duly excepted.

Ninth. That said Court erred in ruling that the sanity of the plaintiff-in-error after the New York orders were made was not in issue.

To which ruling of the learned Court, the counsel for plaintiff-in-error duly excepted.

Tenth. That the said Court erred in sustaining the objection of counsel for the defendant-in-error, Thomas T. Sherman, to the admission in evidence on the part of the plaintiff-in-error, of a certain exemplified copy of the record of proceedings in the State of Virginia, entitled, "In the Matter of John Armstrong Chanler,"

346 and referred to in the evidence as "The Virginia Decree of Sanity."

To which rulings of the learned Court, counsel for the plaintiff-in error duly excepted.

Eleventh. The learned Court erred in sustaining the objection of counsel for the defendant-in-error, Thomas T. Sherman, to the admission of the order, that is the decree, of the Virginia Court as to the sanity of the plaintiff-in-error, offered by counsel for the plaintiff-in-error.

To which ruling of the learned Court, counsel for the plaintiff-in-error duly excepted.

Twelfth. The learned Court erred in ruling that "the question of whether he is sane or insane now, or has been at any time in the past, is an abstract question and entirely immaterial to this case."

To which ruling of the learned Court, counsel for the plaintiff-in-error duly excepted.

Thirteenth. The said Court erred in ruling "that the Supreme

Court of New York State is the only Court that can supersede the inquisition and restore the money and property to Mr. Chaloner."

To which ruling of the learned Court, counsel for the plaintiff-in-error duly excepted.

Fourteenth. The said Court erred in holding that as a matter of law, that if the plaintiff, John Armstrong Chaloner, was in fact in the City of New York, when the proceeding for the appointment of a committee was begun, the Supreme Court had jurisdiction whether he resided there or did not reside there.

347 To which ruling of the learned Court the counsel for the plaintiff-in-error duly excepted.

Fifteenth. The said Court erred in holding as a matter of law that "It is not necessary to discuss it ('that he was lured into the State for the purpose of being thrown into Bloomingdale'), Mr. Sherman is not responsible for the acts of those who put him in Bloomingdale."

To which ruling of the learned Court the counsel for plaintiff-in-error duly excepted.

Sixteenth. That the said Court erred in holding as a matter of law that it is immaterial whether or not the plaintiff was lured into the jurisdiction of the State of New York for the purpose of taking commitment proceedings against him and in holding that thereupon a proper proceeding was begun in the Supreme Court, which resulted in a judgment that the plaintiff is insane, and in holding that that judgment is perfectly valid, no matter how the plaintiff, John Armstrong Chaloner, was brought into the jurisdiction of the Court.

To which ruling of the learned Court, counsel for the plaintiff-in-error duly excepted.

Seventeenth. That the learned Court erred in holding as a matter of law that the judgment rendered in the 1899 proceedings determined the status of the plaintiff, John Armstrong Chaloner and determined the condition of the plaintiff's sanity or insanity, and that such determination is a fact which does not depend on how the plaintiff was brought within the reach of the Court, as determining the question of sanity or insanity.

348 To which ruling of the learned Court, counsel for the plaintiff-in-error duly excepted.

Eighteenth. That the learned Court erred in holding as a matter of law that no matter how John Armstrong Chaloner the plaintiff, came to any particular place or how he was brought or by what fraudulent means he was brought there, if it was claimed that he was insane or had lost his reason, that the Court had jurisdiction over his person and property.

To which ruling of the learned Court, counsel for the plaintiff-in-error duly excepted.

Nineteenth. The learned Court erred in excluding any and all evidence offered or to be offered tending to show the sanity of the plaintiff, and any and all evidence offered or to be offered tending to show that the plaintiff was lured into New York State.

To which ruling of the learned Court, counsel for the plaintiff-in-error excepted.

Twentieth. The learned Court erred in ruling as a matter of law that "The question that he was a resident of another state, so far as the validity of the proceedings to have him adjudicated a lunatic is concerned, is in my opinion, entirely immaterial."

To which ruling of the learned Court, counsel for the plaintiff-in-error duly excepted.

Twenty-first. The learned Court erred in excluding all the evidence offered to show that John Armstrong Chaloner was not at the time of his commitment to Bloomingdale, a resident of New York State.

349 To which ruling of the learned Court, counsel for the plaintiff-in-error duly excepted.

Twenty-second. The learned Court erred in excluding the offer of counsel for the plaintiff-in-error to show that the whole proceeding, which embodied both records, the 1899 proceeding, is void on its face, for twenty "odd other reasons, which involved due process of law."

To which rulings of the learned Court, counsel for the plaintiff-in-error duly excepted.

Twenty-third. The learned Court erred in excluding all the evidence to show that all the proceedings against the plaintiff-in-error, were by virtue of fraud and conspiracy.

To which ruling of the learned Court, counsel for the plaintiff-in-error duly excepted.

Twenty-fourth. The learned Court erred in sustaining the objection of counsel for the defendant-in-error to the following questions read from the deposition of John B. Dickinson, M. D., and put to the witness by counsel for the plaintiff-in-error:

Q. Please state what is the present color of the plaintiff's eyes?

To which ruling of the learned Court, counsel for the plaintiff-in-error duly excepted.

Twenty-fifth. The learned Court erred in excluding evidence to show that the evidence of the alienists upon which the plaintiff-in-error was committed, was false and perjurous and fraudulent, bearing upon the bona fides, and that it deceived and misled the Court, and in ruling that said evidence should have been given on

350 the trial of the case (meaning on the trial of the New York State proceedings).

To which rulings of the learned Court, counsel for the plaintiff-in-error duly excepted.

Twenty-sixth. The learned Court erred in ruling that the Court could not try over, there, the question which was tried before the Sheriff's jury.

To which ruling of the learned Court, counsel for the plaintiff-in-error duly excepted.

Twenty-seventh. The learned Court erred in excluding the testimony of Winthrop Astor Chanler, taken by the defense in this case, tending to show fraud in the commitment of the plaintiff-in-error, and tending to show that the plaintiff-in-error was lured into the jurisdiction of the State of New York.

To which ruling of the learned Court, counsel for the plaintiff-in-error duly excepted.

Twenty-eighth. The learned Court erred in sustaining the objection of counsel for defendant-in-error, to the following question read from the deposition of Winthrop Astor Chanler, and put to said witness by counsel for the plaintiff-in-error:

Q. How long is it that you have been estranged?

To which ruling of the learned Court, counsel for the plaintiff-in-error duly excepted.

Twenty-ninth. The learned Court erred in sustaining the objection of the counsel for the defendant-in-error, to the following question read from the deposition of Winthrop Astor Chanler, and put to said witness by the counsel for the plaintiff-in-error:

351 Q. You have had quarrels with your brother, haven't you?

To which ruling of the learned Court, counsel for the plaintiff-in-error duly excepted.

Thirtieth. The learned Court erred in sustaining the objections of counsel for the defendant-in-error to the following questions read from the deposition of Winthrop Astor Chanler and put to said witness by counsel for the plaintiff-in-error:

Q. Was there an altercation between you at that meeting at which he kicked you out as you say?

Q. Well, wasn't there some quarrel between you with reference to a suggestion that the plaintiff made about an examination of the books of your father's estate?

Q. And that was about the time of this meeting?

Q. Well, now, will you tell us what you remember of that?

Q. Lewis is the other petitioner (Lewis Stuyvesant Chanler)?

Q. Wasn't there really a good deal of ill feeling between all the members of your family, on the one hand, and John Armstrong Chanler, on the other hand, ever since his marriage?

Q. Wasn't there considerable complaint among your brothers and sisters that they were not invited to his wedding?

Q. Well, how many of you felt that way?

Q. Then, you owe your presidency to the votes given by Mr. Sherman as committee?

Q. Did he tell you what he raised this money for?

352 Q. Well, did you criticise his raising money to buy out your bother Robert?

Q. Under those circumstances, why didn't you send Lewis Chanler down there to investigate your brother's condition of health instead of going there yourself—wasn't Lewis more friendly to him than you?

Q. So that Mr. Carey had not seen your brother for at least two years prior to the time of the commitment?

Q. Now, why I ask you that, is because you probably remember that in your application for your brother's commitment you and Mr. Lewis Chanler and Mr. Cary signed a petition in which you state that "Mr. John Chanler has for several months, while at his home in Virginia, been acting in a very erratic manner." He has limited

himself to a peculiar diet; has burned his hands by carrying hot coals in them; he has devised many peculiar schemes, such as a roulette scheme to beat Monte Carlo, and he has given as a reason of these and other acts that he is inspired by a spirit which directs him; for the past three weeks entirely he has constantly talked of these delusions; has neglected his health; has injured his person and has been at times wildly excited, and then, all three of you sign an affidavit stating that you knew the contents of the foregoing petition, and that the same was true of your own knowledge, except as to matters therein stated to be alleged on information and belief, and there are no matters in the petition, which are stated on information and belief; now, how did you come to make that affidavit that you made these facts of your own knowledge?

353 Q. And that the statements contained in this petition were very solemn statements?

Q. And that you considered very carefully this statement didn't you, Mr. J. A. Chanler has for several months while at his home in Virginia, been acting in a very erratic manner?

Q. And you know what home means?

To which ruling of the learned Court, counsel for the plaintiff-in-error duly excepted.

Thirty-first. The learned Court erred in excluding the offer of counsel for the plaintiff-in-error to put the whole deposition of Winthrop Astor Chanler in evidence.

To which ruling of the learned Court, counsel for the plaintiff-in-error duly excepted.

Thirty-second. The learned Court erred in excluding evidence to prove lack of jurisdiction, conspiracy, fraud, want of due process of law, and to prove the sanity and competency of the plaintiff-in-error; and to prove that he was lured into the State of New York; and to prove that the plaintiff-in-error was unable through physical disability to attend the 1899 proceedings; that said proceedings were had in absentia, that there was no real contest and that there was fraud.

To which ruling of the learned Court, counsel for the plaintiff-in-error duly excepted.

Thirty-third. The learned Court erred in sustaining the objection of counsel for defendant-in-error, to the offer made by counsel for plaintiff-in-error, of the letter from John Armstrong Chaloner to Hon. Micajah Woods, dated July 3rd, 1897.

To which ruling of the learned Court, counsel for the plaintiff-in-error duly excepted.

354 Thirty-fourth. That the said Court erred in sustaining the objection of counsel for defendant-in-error to the following question read from the deposition of John Armstrong Chaloner and put to said witness by counsel for plaintiff-in-error.

Q. Was the work of building up the Town of Roanoke Rapids completed under your supervision in 1896?

To which ruling of the learned Court, counsel for the plaintiff-in-error duly excepted.

Thirty-fifth. That the said Court erred in sustaining the objection

counsel for the defendant-in-error, and in striking out the answer hereto; read from the deposition of John Armstrong Chaloner and ut to said witness by counsel for plaintiff-in-error.

Q. What was the amount of your investment?

A. The amount was actually in cash $13,000.00, the balance hich was on interest was $12,000.00, the interest being $720 a ear.

To which ruling of the learned Court, counsel for the plaintiff-n-error duly excepted.

Thirty-sixth. That the said Court erred in holding as a matter f law that the defendant, Thomas T. Sherman, is not responsible or the acts of those who put the plaintiff, John Armstrong Chaloner n the Bloomingdale Asylum, nor in any way accountable therefor.

To which ruling of the learned Court, counsel for plaintiff-in-error duly excepted.

Thirty-seventh. That the learned Court erred in holding as a matter of law that testimony going to prove that John Armstrong
355 Chaloner was not at the time of his commitment to Bloomingdale Asylum a resident of the State of New York so far as the validity of proceedings to adjudicate him a lunatic was concerned is immaterial; and that the Court erred in sustaining the objections of counsel for the defendant-in-error to the admission of evidence on the part of the plaintiff-in-error of all testimony as to the residence of the plaintiff-in-error in another State at the time of his commitment to Bloomingdale Asylum.

To which rulings of the learned Court counsel for plaintiff-in-error duly excepted.

Thirty-eighth. That the learned Court erred in directing a verdict for the defendant-in-error upon the trial herein, and to which ruling the plaintiff-in-error excepted.

Dated, New York, July 3rd, 1912.

WILLIAM D. REED,
Attorney for Plaintiff-in-Error.

47 Cedar Street, New York City, N. Y.

356 *Order Allowing Writ of Error and Fixing Bond.*

At a Term of the United States District Court for the Southern District of New York, Second Circuit, Held at the Post Office Building, in said District, in the Borough of Manhattan, on the — Day of April, 1912.

Present: Hon. Learned Hand, Judge of the United States District Court.

JOHN ARMSTRONG CHALONER, Plaintiff,
against
THOMAS T. SHERMAN, Defendant.

This 5th day of July, 1912, came the plaintiff John Armstrong Chaloner, by his attorney, William D. Reed, Esq., and filed herein

and presented to the Court his petition praying for the allowance of a writ of error and assignment of errors intended to be urged by him, praying also that a transcript of the records and proceedings, and papers upon which the judgment herein was rendered duly authenticated, may be sent to the United States Circuit Court of Appeals for the Second Judicial Circuit, that such other and further proceedings may be had as may be proper in the premises

On consideration whereof the Court does allow the writ of error and upon the annexed stipulation of the attorneys for the
357 respective parties hereto, dated May 14, 1912, the filing of a bond is hereby expressly waived and it is accordingly

Ordered that a writ of error be and hereby is allowed to have reviewed in the United States Circuit Court of Appeals for the Second Circuit the judgment heretofore entered herein on March 6th, 1912, and it is

Further ordered that all further proceedings be superseded and stayed until the final determination of said writ of error by the said United States Circuit Court of Appeals for the Second Circuit, and until the further order of this Court.

LEARNED HAND, *D. J.*

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Judge of the District Court of the United States for the Southern District of New York, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the District Court, before you, or some of you, between John Armstrong Chaloner, plaintiff against Thomas T. Sherman, defendant, a manifest error hath happened, to the great damage of the said John Armstrong Chaloner, as is said and appears by his complaint, we, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then
358 under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Judges of the United States Circuit Court of Appeals for the Second Circuit, at the City of New York, together with this writ, so that you have the same at the said place, before the Judges aforesaid, on the 3rd day of August, 1912, that the record and proceedings aforesaid being inspected, the said Judges of the United States Circuit Court of Appeals for the Second Circuit, may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness, the Honorable George C. Holt, Senior Judge of the District Court of the United States, Southern District of New York, this 5th day of July in the year of our Lord one thousand nine

ndred and twelve and of the Independence of the United States e one hundred and thirty-sixth.

THOS. ALEXANDER,
Clerk of the District Court of the United States of America for the Southern District of New York in the Second Circuit.

The foregoing writ is hereby allowed.

LEARNED HAND,
U. S. District Judge.

59 *Citation.*

y the Honorable, one of the Judges of the District Court of the United States for the Southern District of New York, in the Second Circuit, to Thomas T. Sherman, defendant-in-error, Greeting:

You are hereby cited and admonished to be and appear before United States Circuit Court of Appeals for the Second Circuit, o be holden at the Borough of Manhattan in the City of New ork, in the District and Circuit above named, on the 3rd day of ugust, 1912, pursuant to a writ of error filed in the Clerk's office f the District Court of the United States for the Southern District f New York, wherein John Armstrong Chaloner is the plaintiff-in-rror and Thomas T. Sherman is the defendant-in-error, and you re required to show cause, if any there be, why the judgment ren-lered against the said plaintiff-in-error as in said writ of error men-ioned should not be corrected and speedy justice should not be lone in that behalf.

Given under my hand at the Borough of Manhattan, in the City of New York, in the District and Circuit above named, this 5th day of July, in the year of our Lord one thousand nine hun-dred and twelve, and of the Independence of the United States the one hundred and thirty-sixth.

LEARNED HAND,
Judge of the District Court of the United States for the Southern District of New York in the Second Circuit.

360 *Stipulation as to Correctness of Transcript.*

United States District Court, Southern District of New York.

JOHN ARMSTRONG CHALONER, Plaintiff,

v.

THOMAS T. SHERMAN, Defendant.

It is hereby stipulated and agreed, that the foregoing is a true transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

Dated November 5, 1913.

WILLIAM D. REED,
Attorney for Plaintiff.

EVARTS, CHOATE & SHERMAN,
Attorneys for Defendant.

361 *Certification of Transcript.*

UNITED STATES OF AMERICA,
Southern District of New York, ss:

JOHN ARMSTRONG CHALONER, Plaintiff,
v.
THOMAS T. SHERMAN, Defendant.

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America, for the Southern District of New York, do hereby certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 5th day of November in the year of our Lord one thousand nine hundred and thirteen and of the Independence of the said United States the one hundred and thirty-eighth.

[SEAL.] ALEX. GILCHRIST, JR., *Clerk.*

362 United States Circuit Court of Appeals for the Second Circuit, October Term, 1913.

No. 202.

Argued May 7, 1914. Decided June 5, 1914.

JOHN ARMSTRONG CHALONER, Plaintiff in Error,
vs.
THOMAS T. SHERMAN, Defendant in Error.

In Error to the District Court of the United States for the Southern District of New York.

Before Coxe and Rogers, Circuit Judges, and Mayer, District Judge.

This cause comes here upon writ of error to review a judgment of the District Court, Southern District of New York, entered upon the verdict of a jury directed by the court in favor of defendant-in-error, who was the defendant below.

MAYER, *J.:*

Chaloner, who was adjudicated an incompetent by the Supreme Court of the State of New York in 1899, brought this action in 1904 to recover damages against Sherman, who was appointed his com-

mittee in 1901, for alleged wrongful withholding of and re-
363 fusal to turn over on April 4, 1904, Chaloner's property then in Sherman's custody as committee.

The numerous assignments of error, because of exclusion of testimony by the trial court, are based upon the theory that this court has power to set aside the judgment of the New York Supreme Court. The sole question is whether that judgment is void or was procured by extrinsic fraud so as to subject it to a successful collateral attack in another jurisdiction.

On March 10, 1897, an ex-parte order was made by a Justice of the New York Supreme Court, committing Chaloner as an insane person to the institution known as Bloomingdale Insane Asylum at White Plains, Westchester County. This order was in accordance with the Insanity Law of New York (Laws of 1896, Chapter 545) which permits a commitment without notice and that statute has been held to be constitutional.

Sporza vs. German Savings Bank, 192 N. Y., 8.
Matter of Walker, 57 App. Div., 1.

While an inmate of that institution under the commitment, a proceeding looking to the appointment of a committee was commenced by a petition presented by two of his brothers to the Supreme Court in the County of New York. This petition was accompanied with the affidavits of several physicians as to the mental condition of the alleged incompetent, and a notice of motion that on May 19, 1899, the petitioners would apply to the court for an order granting the prayer of the petition. Thereupon, on May 9, 1899, the court made an order requiring personal service on Chaloner of this order, the notice of motion, petition and affidavits.

On the same day, viz.: May 9, 1899, personal service was made on Chaloner at the Bloomingdale Asylum.

On May 19, 1899, when the motion was returnable, no one appeared in opposition thereto and the court, as provided by sections 2327 and 2328 of the New York Code of Civil Procedure, ordered that a commission in the nature of a writ de lunatico inquirendo be issued out of and under the seal of the court directed to three commissioners to inquire by a jury of the County of New York
364 into the competency of the alleged incompetent and it was also ordered that the Sheriff be instructed to summon a jury in the manner required by law. It was further ordered that the commission be executed in the County of New York and that at least five days' previous notice of the time and place of the execution of the commission be given to Chaloner and to the person having charge of him who, in this instance, was the Medical Superintendent of the Asylum. It was further ordered that the Commissioners might, in their discretion, dispense with Chaloner's attendance unless the jurors or any of them should require such attendance.

Notice dated May 23, 1899 that the commission would be executed on June 12, 1899 at 4 P. M., at the New York County Court House,

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was personally served on both Chaloner and the Medical Superintendent on June 6, 1899.

The Commissioners took their oath on June 5, 1899 and it was filed on June 12, 1899.

The jury was duly summoned for and sat with the Commissioners on June 12, 1899 at the New York County Court House. Chaloner did not appear in person or by attorney. Counsel for the petitioners stated that, if after hearing the testimony the jury desired the presence of the alleged incompetent, he would be brought before them. Testimony was taken as to the mental condition of Chaloner and as to the property owned by him.

The Medical Superintendent testified that Chaloner said he was physically unable to be present.

Counsel for petitioners again said that he thought it entirely proper to take an adjournment to any day agreeable to the Commissioners in order to produce Chaloner before the jury, but the jury stated that they did not desire his production. Thereupon counsel called the jury's attention to the order of the court requiring the presence of Chaloner if any of the Commissioners or the jurors so wished.

Thereafter the Medical Superintendent was again called and stated that to produce Chaloner would temporarily do him harm mentally and that Chaloner "said he did not want to come down." Dr. Carlos F. MacDonald then testified that to call Chaloner would "tend to aggravate his mental condition."

Finally, the matter was submitted to the jury and a verdict was returned that Chaloner was incompetent.

365 A notice of motion for June 23, 1899, for an order confirming the inquisition and appointing Prescott Hall Butler, Committee of the person and estate of Chaloner, was personally served on him on June 15, 1899 at the Asylum.

There being no opposition, the court, on June 23, 1899, made and filed its decretal order of confirmation and appointed Butler the committee. Butler subsequently resigned and his resignation was ordered accepted by the court on November 19, 1899 and Sherman, the defendant here, was appointed in his place.

Chaloner claims that he is and at all times was a resident of Virginia and for that reason his sanity could not be determined in New York; that he was lured into the State of New York in 1897 and was committed improperly without notice, that the inquiry de lunatico in 1899, in any event, should have been in Westchester County; that the notice thereof was insufficient; that the decretal order and all the proceedings were void, among other reasons, because he was not present before the Commissioners and the Sheriff's jury; that he always was and now is sane and was so declared in 1901 by a court of competent jurisdiction in Virginia; and that, therefore, the appointment of Sherman was void.

Insanity is, of course, not necessarily a continuing condition but the trial court was right in holding that Chaloner's present condition never became an issue in the case and could not have become so,

unless the court below had been justified in collaterally setting aside the decretal order.

Then, if defendant had adduced some evidence of present incompetency as an affirmative defense, and then only would the present mental condition of plaintiff have been an issuable fact.

The trial court was likewise right in excluding testimony to show the mental condition of Chaloner in 1899 for that issue could not be litigated in this action and was solely for the New York courts.

Matter of Curtiss, 137 App. Div. 584; 199 N. Y., 36.

Whether or not, in 1897, plaintiff was lured into this state was immaterial because defendant was appointed not by virtue of the 1897 proceeding but as successor to the committee appointed in the 1899 proceeding.

Even assuming that plaintiff was at all times a resident of
366 Virginia, the question of his residence was one of the facts in issue in the 1899 proceedings and having been there adjudicated cannot be collaterally attacked (Kinnier vs. Kinnier, 45 N. Y. 535); but, in any event, the New York court had jurisdiction in view of the fact that plaintiff was within the state and had property therein when the proceedings were commenced.

Section 2323 of the New York Code of Civil Procedure provides: "An application for the appointment of such a committee must be made by petition which may be presented by any person. Except as provided in the next section" (relating to incompetents in state institutions) "where the application is made to the supreme court, the petition must be presented at a special term held within the judicial district, or to a justice of said court, within such judicial district at chambers where the person alleged to be incompetent resides; or if he is not a resident of the state or the place of his residence cannot be ascertained, where some of his property is situated or the State institution is situated of which he is an inmate."

The venue of a proceeding is entirely within the control of a state in respect of subject matter over which a state court has sole jurisdiction and the fact that Chaloner had real property in New York County was enough to satisfy the statute.

Matter of Ganse, 9 Paige Chancery, 416.
Emmerich vs. Thorley, 35 App. Div., 452.

The trial court was also correct in excluding testimony offered to show that the testimony in the 1899 proceeding was perjurious.

The question whether the alleged perjurious testimony was true was necessarily adjudged by the New York court in finding the plaintiff incompetent. This court cannot determine whether or not the testimony in question was perjured without trying over again the very same issue which the New York Court decided when it made the decretal order complained of. It is well settled that the fact that a judgment is procured by false testimony does not open it to collateral attack.

367 U. S. vs. Throckmorton, 98 U. S., 61.
Freeman on Judgments (4th Ed.), sec. 334.

The failure of a person affected by an order or judgment to appear after due notice, cannot, of course, affect the validity of an adjudication.

Simon vs. Craft, 182 U. S., 427.

The record shows that scrupulous care was exercised in serving the various notices of motions and proceedings on Chaloner.

If the trial judge had received in evidence the excluded letter written in July 1897 by Chaloner to Woods, a Virginia attorney, it would have appeared that he then wrote:

"It is unnecessary for me to say that nothing but the most unexpected and dire necessity could induce me to go before a 'Sheriff's Jury,' the usual manner, in the State of New York, of carrying out a Habeas Corpus Proceedings for a man who has been declared insane by a Judge. I object to this for three reasons. First, because it is not the right way to go about it. I am not a citizen of the State of New York, and therefore the 'Sheriff's Jury' does not apply to my case.

Second, because I do not desire the notoriety consequent upon such a proceeding.

Third, because my family are most anxious that I should go before a 'Sheriff's Jury' in the desperate hope that the said jury would believe what they, and the doctors, said about me. In which case the Jury would pronounce me insane, and hand me over to the custody of my family, who could then apply for and receive into their hands my property and the management thereof—under the name of a Commission."

And it further appears from Chaloner's deposition excluded by the trial judge, that he absented himself from the 1899 proceeding by his own choice. If, therefore, he knew at that time what he was doing he deliberately failed to appear when full opportunity was afforded to him so to do.

368 But the propriety and sufficiency of the notice as matter of law, are no longer open to question.

Matter of Blewitt, 131 N. Y., 541.

Gridley vs. The College of St. Francis Xavier, 137 N. Y., 327.

Finally, in regard to the failure to give Chaloner notice of the resignation of Butler and the appointment of Sherman as committee, it appears that there is no statutory requirement of notice in such a proceeding and it would seem that notice to the committee of a proposed removal is the only notice required.

Matter of Andrews, 192 N. Y., 514.

But, if notice were required, the failure to give it is an irregularity which must be dealt with by the State court of original jurisdiction.

Matter of Osborn, 74 App. Div., 113.

Matter of Porter, 34 App. Div., 147.

Our conclusion is that the judgment of the New York court was not a void judgment and it must remain valid until reversed or set aside by the courts of New York. This has never been attempted and, therefore, the judgment of the Supreme Court of New York remains to-day in full force and validity. If the petitioner has recovered and is no longer insane, this fact should be brought to the attention of the State Court and if sanity is established the court will undoubtedly restore the plaintiff to his rights. So, too, even if some of the requirements of the statute had been omitted or neglected or insufficient evidence of insanity was adduced, relief must be obtained in the court which appointed the committee. If a prima facie case were made out we have no reason to doubt that the state courts would grant appropriate protection to guard the plaintiff from arrest while attending such proceeding, just as this court did in this case.

Chanler vs. Sherman, 162 F. R., 19.

369 But, however this may be, we think that this court has not jurisdiction to set aside or annul the judgment of the state Supreme Court rendered in a proceeding in which it obviously had jurisdiction.

The judgment is affirmed, with costs.

W. D. Reed, for the Plaintiff-in-Error.
J. H. Choate, Jr., for the Defendant-in-Error.

370 At a Stated Term of the United States Circuit Court of Appeals in and for the Second Circuit, Held at the Court Rooms in the Post-Office Building in the City of New York, on the 15th Day of June, One Thousand Nine Hundred and Fourteen.

Present:

Hon. Alfred G. Coxe, Hon. Henry Wade Rogers, Circuit Judges, and Hon. Julius M. Mayer, District Judge.

JOHN ARMSTRONG CHALONER, Plaintiff in Error,
vs.
THOMAS T. SHERMAN, Defendant in Error.

Error to the District Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that the judgment of said District Court be and it hereby is affirmed with costs.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

A. C. C.

371 Endorsed: United States Circuit Court of Appeals, Second Circuit. J. A. Chaloner vs. Thos. T. Sherman. Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed Jun- 18, 1914. William Parkin, Clerk.

372 At a Stated Term of the United States Circuit Court of Appeals in and for the Second Circuit, Held at the Court Rooms in the Post-Office Building, in the City of New York on the 6th Day of April, 1915.

Present:

Alfred C. Coxe, Henry Wade Rogers, Julius M. Mayer, Judges.

JOHN ARMSTRONG CHALONER, Plaintiff,
against
THOMAS T. SHERMAN, Defendant.

This 6th day of April, 1915, the plaintiff, John Armstrong Chaloner, by his attorney, William Dike Reed, Esq., came and filed herein and presented to the Court his petition praying for the allowance of a writ of error and assignment of errors intended to be urged by him, praying also that a transcript of the records and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States and that such other and further proceedings may be had as may be proper in the premises.

On consideration whereof the Court does allow the writ of error and upon the annexed stipulation of the attorneys for the respective parties hereto, dated March 2nd, 1915, the filing of a bond is hereby expressly waived and it is accordingly

Ordered that a writ of error be and hereby is allowed to have reviewed in the Supreme Court of the United States, the judgment heretofore entered on the 27th day of June, 1914, which affirmed the final judgment herein entered on the 6th day of March, 1912, and it is further

373 Ordered that all further proceedings be superceded and stayed until the final determination of said writ of error by the said Supreme Court of the United States and until the further order of this Court.

ALFRED C. COXE,
Judge U. S. Cir. Ct. of Appeals.

374 United States Circuit Court of Appeals for the Second Circuit.

JOHN ARMSTRONG CHALONER, Plaintiff-in-Error,
against
THOMAS T. SHERMAN, Defendant-in-Error.

To the Honorable the Judges of the Supreme Court of the United States:

Now, comes John Armstrong Chaloner, by his attorney, and complains that in the record of proceedings and also in the rendition of

the judgment of the United States Circuit Court of Appeals for the Second Circuit, in the above entitled cause, on the 27th day of June, 1914, affirming the judgment of the United States District Court for the Southern District of New York, in favor of the defendant in error, *John Armstrong Chaloner,* upon the issues in this action, entered on the 6th day of March, 1912, in said cause, manifest error hath intervened to the great damage of the said John Armstrong Chaloner.

Your petitioner states that this cause was brought on or about the 5th day of April, 1904, by your petitioner against the defendant in error in the United States Circuit Court, Southern District of New York, for damages in the sum of Two Hundred and Sixty-three Thousand Five Hundred and Twenty-three and 65/100 Dollars suffered by your petitioner by reason of the wrongful and illegal acts and misconduct of the defendant in error, in that notwithstanding the illegality, invalidity and nullity of certain orders of the Supreme Court of the State of New York and of certain proceedings respecting the custody of the person and property of your petitioner conducted in said court without jurisdiction, without due process of law, without notice and without the opportunity to your petitioner to appear and be heard, and upon which proceedings said orders
375 were based, the defendant in error claiming to be, by virtue thereof, a committee of the person and estate of the plaintiff in error in and for the State of New York, and under color of the said order and proceedings, not only took, collected, had and received the moneys and property of this plaintiff in error, your petitioner, but has, without the consent or authority of this plaintiff in error, retained and withheld and still retains and withholds the same from this plaintiff in error and has failed and refused and still refuses to turn over and pay the same to this plaintiff in error, your petitioner although duly demanded.

That the defendant in error served and filed an answer to the complaint in said cause, in which answer the defendant in error not only relied upon the validity of said New York orders but went further and alleged that the plaintiff, your petitioner, was and had been in fact insane and further alleged that a certain judgment of the County Court of Albermarle County, State of Virginia, which duly established the sanity of the said John Armstrong Chaloner, your petitioner, was collusive and void.

Thereafter this action duly came to trial before a judge and jury in the United States District Court, Southern District of New York and certain allegations and proofs on the part of the plaintiff in error were heard and considered and certain other allegations and proofs on the part of the plaintiff in error were not allowed to be heard by the Court, excluding among other things the Virginia Court record of November 6th, 1901, which declared plaintiff sane and competent. The Court, on motion of defendant in error at the close of the plaintiff's case, directed a verdict in favor of the defendant in error, and judgment was thereupon entered in favor of the defendant in error against your petitioner upon the issues in the action on the 6th day of March, 1912.

Thereafter your petitioner procured from the United States Circuit Court of Appeals for the Second Circuit, a writ of error to review said judgment and such proceedings were had therein that an order of the United States Circuit Court of Appeals for the Second
376 Circuit was made and entered confirming in all respects said judgment with costs and on the 18th day of June, 1914, a mandate was duly issued thereon to the Judges of the United States District Court for the Southern District of New York, and a judgment was thereupon, and on the 27th day of June, 1914, duly entered affirming in all respects the said final judgment of March 6th, 1912.

Wherefore your petitioner prays for allowance of writ of error to the end that this cause and the said judgment may be carried to the Supreme Court of the United States for review and prays for supersedeas of said judgment and such other process as may cause the same to be corrected in said Supreme Court and that such other and further proceedings may be had as may be proper in the premises.

WILLIAM DIKE REED,
Attorney for John Armstrong Chaloner.

Office & Post Office Address, 45 Cedar Street, Borough of Manhattan City of New York.

377 United States District Court, Southern District of New York.

JOHN ARMSTRONG CHALONER, Plaintiff-in-Error,
against
THOMAS T. SHERMAN, Defendant-in-Error.

It is hereby stipulated, consented and agreed by and between the attorneys for the respective parties hereto that the defendant in error expressly waives the filing of a bond by the plaintiff-in-error on the issuance of a writ of error out of this court for review, in the Supreme Court of the United States of the judgment heretofore entered on the 27th day of June, 1914.

Dated, New York, March 2nd, 1915.

WILLIAM D. REED,
Attorney for Plaintiff-in-Error.
EVARTS, CHOATE & SHERMAN,
Attorneys for Defendant-in-Error.

378 (Endorsed:) United States Circuit Court of Appeals, Second Circuit. John Armstrong Chaloner, Plaintiff-in-error, against Thomas T. Sherman, Defendant-in-error. Petition and Order for Writ of Error and Stipulation. William Dike Reed, Attorney for Plaintiff-in-error, Office & Post Office Address, 45 Cedar Street, Borough of Manhattan, City of New York. United States Circuit Court of Appeals, Second Circuit. Filed Apr. 6, 1915. William Parkin, Clerk.

379 United States Circuit Court of Appeals for the Second Circuit.

JOHN ARMSTRONG CHALONER, Plaintiff-in-Error,
against
THOMAS T. SHERMAN, Defendant-in-Error.

Assignment of Errors.

Now comes the plaintiff in error, John Armstrong Chaloner herein by William D. Reed, his attorney, and respectfully submits and presents and files his assignment of errors complained of and says: That in the record of the proceedings in the above entitled cause in the United States Circuit Court of Appeals for the Second Circuit, there is manifest error in this, to wit:

First. That the learned United States Circuit Court of Appeals for the Second Circuit erred in affirming the judgment of the United States District Court for the Southern District of New York, dismissing the complaint filed by the plaintiff in error in said cause.

Second. That the learned United States Circuit Court of Appeals for the Second Circuit erred in affirming the decision of the trial court in holding that the plaintiff Chaloner's present condition of sanity never became an issue in the case and could never become so unless the court below had been justified in collaterally setting aside the decretal order or unless the defendant had adduced some evidence of present incompetency as an affirmative defense.

Third. That the learned United States Circuit Court of Appeals for the Second Circuit erred in affirming the decision of the trial court in excluding testimony to show the mental condition of the plaintiff, Chaloner, in 1899, and in holding that that issue could not be litigated in this action and was solely for the New York Courts.

380 Fourth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that whether or not in 1897, the plaintiff was lured into this State was immaterial.

Fifth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the New York Court had jurisdiction over the plaintiff in the 1899 proceedings, even assuming that the plaintiff was at all times a resident of Virginia.

Sixth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the question of plaintiff's residence was one of the facts in issue in the 1899 proceedings and having been there adjudicated that it cannot be collaterally attacked.

Seventh. That the learned United States Circuit Court of Appeals for the Second Circuit erred in affirming the rulings of the trial court in excluding testimony offered to show that the testimony in the 1899 proceeding was perjurious.

Eighth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the plaintiff Chaloner failed to appear in the 1899 proceedings after due notice of the order or judgment to appear.

Ninth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that care was exercised in serving the various notices of motions and proceedings on the plaintiff Chaloner.

Tenth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in its finding that the plaintiff Chaloner deliberately failed to appear in the 1899 proceedings.

Eleventh. That the learned United States Circuit Court of Appeals for the Second Circuit erred in finding that full opportunity was afforded to the plaintiff Chaloner to appear in the 1899 proceedings.

Twelfth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the propriety
381 and sufficiency of the notice to the plaintiff Chaloner of the 1899 proceedings are no longer open to question.

Thirteenth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that in regard to the failure to give the plaintiff Chaloner notice of the resignation of the committee Butler and the appointment of Sherman as committee that there is no statutory requirement of notice in such a proceeding and that notice to the committee of a proposed removal is the only notice required.

Fourteenth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that if notice were required the failure to give it is an irregularity which must be dealt with by the state court of original jurisdiction.

Fifteenth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the judgment of the New York court was not a void judgment.

Sixteenth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the judgment of the New York court must remain valid until reversed or set aside by the courts of New York.

Seventeenth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the judgment of the Supreme Court of New York remains today in full force and validity.

Eighteenth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that if the petitioner's sanity is established and even if some of the requirements of the statute had been omitted or neglected or insufficient evidence of insanity was adduced, relief must be obtained in the court which appointed the committee.

Nineteenth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that this Federal Court has not jurisdiction to set aside or annul the judgment of the State Supreme Court.

Wherefore the said plaintiff in error prays that the judgment of the Circuit Court of Appeals for the Second Circuit and
382 the judgment of the District Court of the United States for the Southern District of New York be reversed and such di-

rections be given that full force and efficacy may enure to said plaintiff in error by reason of the allegations set up in the complaint filed in said cause.

WILLIAM D. REED,
Attorney for Plaintiff in Error,
John Armstrong Chaloner.

Office & Post Office Address, 45 Cedar Street, Borough of Manhattan, New York City.

383 (Endorsed:) United States Circuit Court of Appeals for the Second Circuit. John Armstrong Chaloner, Plaintiff-in-error, against Thomas T. Sherman, Defendant in Error. Assignment of Errors. William D. Reed, Att'y for Plaintiff in error, Office & Post Office Address, 45 Cedar Street, Borough of Manhattan, City of New York. United States Circuit Court of Appeals, Second Circuit. Filed Ap'l 6, 1915. William Parkin, Clerk.

384 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby Certify that the foregoing pages, numbered from 1 to 383 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of John Armstrong Chaloner, against Thomas T. Sherman as the same remain of record and on file in my office.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 7th day of April in the year of our Lord One Thousand Nine Hundred and fifteen and of the Independence of the said United States the One Hundred and thirty-ninth.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN, *Clerk.*

[United States internal revenue documentary stamp, series of 1914, ten cents, canceled 4/7/15. Wm. P., C.]

385 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Judges of the United States Circuit Court of Appeals for the Second Circuit, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the District Court, before you, or some of you, between John Armstrong Chaloner, plaintiff-in-error and Thomas T. Sherman, Defendant-in-error a manifest error hath happened, to the great damage of the said plaintiff-in-error as is said and appears by his complaint, We, being willing that such error,

if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Judges of the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said United States Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness, the Honorable Edward D. White, Chief Justice of the United States Supreme Court this 6th day of April, in the year of our Lord one thousand nine hundred and fifteen and of the Independence of the United States the one hundred and thirty-ninth.

[Seal of the Circuit Court of Appeals of the United States, Second Circuit.]

(L. S.) WM. PARKIN,
Clerk of the Circuit Court of Appeals of the United States of America, for the Second Circuit.

The foregoing writ is hereby allowed.

ALFRED C. COX,
U. S. Circuit Judge.

386 [Endorsed:] United States Circuit Court of Appeals for the Second Circuit. John Armstrong Chaloner, Plaintiff-in-error against Thomas T. Sherman, Defendant-in-error. Writ of Error. William D. Reed, Attorney for Plaintiff-in-error, Office & Post Office Address, 45 Cedar Street, Borough of Manhattan, City of New York. Service of a Copy of the within Paper is hereby admitted Apr. 6 1915. Evarts, Choate & Sherman, Per O. J. ——, Sols. for defendant-in-Error. United States Circuit Court of Appeals, Second Circuit. Filed Apr. 7, 1915. William Parkin, Clerk.

387 By the Honorable Alfred C. Coxe, One of the Judges of the United States Circuit Court of Appeals for the Second Circuit.

To Thomas T. Sherman, Greeting:

You are hereby cited and admonished to be and appear at the United States Supreme Court to be holden at the City of Washington in the District of Columbia within thirty days from the date hereof pursuant to a writ of error filed in the Clerk's office of the United States Circuit Court of Appeals for the Second Circuit wherein John Armstrong Chaloner is plaintiff-in-error and you are defendant-in-error to show cause, if any they be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand at the Borough of Manhattan in the City of New York, in the District and Circuit above named, this 6th day of April, in the year of our Lord One Thousand Nine Hundred and Fifteen, and of the Independence of the United States the One Hundred and Thirty-ninth.

ALFRED C. COXE,
Judge of the Circuit Court of Appeals of the United States for the Second Circuit.

388 [Endorsed:] United States Circuit Court of Appeals for the Second Circuit. John Armstrong Chaloner, Plaintiff-in-error against Thomas T. Sherman, Defendant-in-error. Citation. William D. Reed, Attorney for plaintiff in error, Office & Post Office Address, 45 Cedar Street, Borough of Manhattan, City of New York. Service of a Copy of the within Paper is hereby admitted Apr. 6, 1915. Evarts, Choate & Sherman, Per C. J. —— Sols. for defendant-in-error. United States Circuit Court of Appeals, Second Circuit. Filed Apr. 7, 1915. William Parkin, Clerk.

389 In the Supreme Court of the United States, October Term, 1916.

No. 121.

JOHN ARMSTRONG CHALONER, Plaintiff in Error,
vs.
THOMAS T. SHERMAN, Defendant in Error.

Stipulation to Correct Errors in Transcript of Record.

It is hereby stipulated and agreed by and between counsel of record for the respective parties in the above entitled cause, that the Clerk shall make the following corrections in the Transcript of Record in said cause before the printing of same:

Folios 94, 95, 99: G. Ruffin Randolph, change to "C. Ruffin Randolph."

Folios 136 through 164: Troubetzskoy, change to "Troubetzkoy."

Folio 198: Troubetzkoi, change to "Troubetzkoy."

Folio 200: Troubetzkoi, change to "Troubetzkoy."

Folio 208: Troubetzkoi, change to "Troubetzkoy."

Folio 211: Cobden, change to "Cobham."

Folios 241 through 245: John V. Dickinson, change to "John B. Dickinson."

Folio 242: Vyrancke, change to "Byvancke."

Folio 299: Cary, change to "Carey."

Folio 300: Cary, change to "Carey."

Folios 301, 302: Cary, change to "Carey."

Folio 324: John V. Dickinson, change to "John B. Dickinson."

Folio 346: Kerswick, change to "Keswick."
390 Folio 581: Troubetzkoi, change to "Troubetzkoy."
Folio 772: Lyons, change to "Lyon."
Folio 819: Lyons, change to "Lyon."
Folio 1030: Nuilly, change to "Neuilly."
Folio 1046: John V. Dickinson, change to "John B. Dickinson."
Folio 1054: Cary, change to "Carey."
Folio 1071: Chanloner, change to "Chaloner."

E. F. COLLADAY,
Attorney for Plaintiff in Error.
JOSEPH H. CHOATE, JR.,
Attorney for Defendant in Error.

391 [Endorsed:] 121—16/24696. No. 121. October Term, 1916. John Armstrong Chaloner, Plaintiff in Error, vs. Thomas T. Sherman, Defendant in Error. Stipulation to Correct Errors in Transcript of Record. Edward F. Colladay, Attorney and Counsellor at Law, Union Trust Building, Washington, D. C.

392 [Endorsed:] File No. 24696. Supreme Court U. S., October term, 1916. Term No. 121. John Armstrong Chaloner, Plaintiff in Error, vs. Thomas T. Sherman. Stipulation to correct errors in Transcript of Record. Filed July 28, 1916.

Endorsed on cover: File No. 24,696. U. S. Circuit Court Appeals, 2d Circuit. Term No. 121. John Armstrong Chaloner, plaintiff in error, vs. Thomas T. Sherman. Filed April 30th, 1915. File No. 24,696.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1916.

No. 121.

JOHN ARMSTRONG CHALONER, *Plaintiff in Error,*

against

THOMAS T. SHERMAN, *Defendant in Error.*

ARGUMENT OF COUNSEL FOR PLAINTIFF IN ERROR.

OPENING STATEMENT.

This is an action brought by John Armstrong Chaloner, a legal and actual resident of the State of Virginia, against Thomas T. Sherman, a legal and actual resident of the State of New York, to recover certain moneys and personal property owned by the plaintiff in error and in the possession or control of the defendant in error without authority of law, as alleged by said Chaloner.

In March, 1897, Mr. Chaloner was living peacefully upon his estate, "The Merry Mills," in Albemarle County, Virginia, where he had resided for many years theretofore. At that time he was approached by Stanford White and another, acting in the interest of his brothers and sisters, residents of New York, and on false and fraudulent representations was lured to New York City

where in the Kensington Hotel, under the pretense of having his eyes examined by oculists, two alienists, M. Allen Starr and Eugene Fuller, examined him and immediately thereafter, on March 10, 1897, upon the petition of two of his brothers, Winthrop A. Chanler and Lewis S. Chanler, and a cousin, Arthur A. Carey, which petition contained material statements which were perjured, he was committed in ex parte proceedings by Judge H. A. Gildersleeve to a private insane asylum popularly called Bloomingdale, which is a branch of the New York Hospital, maintained by the Society of the New York Hospital, a private corporation.

Mr. Chaloner remained an inmate of said private asylum without further proceedings until May, 1899.

Shortly prior to the 1897 proceedings, said Stanford White, acting in the interest of Mr. Chaloner's brothers and sisters, but without disclosing that fact, law partner of Mr. Chaloner, obtained from Mr. Chaloner a limited power of attorney and managed his property and affairs thereunder until the proceedings of 1899. (Brief of plaintiff in error, p. 393, and appendix to same, p. 490.)

In May, 1899, a petition was filed in the Supreme Court of New York, in the County of New York, signed "Winthrop Chanler by Lewis S. Chanler," and "Lewis S. Chanler," petitioners, sworn to by Lewis S. Chanler, praying "That Stanford White or some other suitable and proper person may be under the order and judgment of this court appointed a committee of the person and of the property and estate of the said John Armstrong Chanler, as an incompetent person. * * *"

The Court appointed David B. Ogden, Allen Fitch and G. Sherman a commission under a writ de lunatico inquirendo, dated the 3d day of May, 1899, and said commission caused the sheriff to summon a jury. The commission and jury assembled at four o'clock in the

afternoon of the 12th day of June, 1899, at the county court house in the borough of Manhattan, New York City, twenty miles away from the place where Mr. Chaloner was confined, heard testimony of alienists as to Mr. Chaloner's mental and physical condition, and testimony of one Charles Weston as to his property, and testimony of said Winthrop Chanler as to his family and property.

Prior to the hearing of June 12, 1899, on June 6, an alleged notice of said proceeding was delivered to Mr. Chaloner in Bloomingdale.

At the hearing Dr. Samuel B. Lyon, superintendent of Bloomingdale, testified that Mr. Chaloner did not appear because he was ill.

The hearing could have been held at White Plains, a very short distance from the place of incarceration of Mr. Chaloner, but instead it was held at four o'clock in the afternoon at the court house in New York City.

The jury disposed of the matter very hastily, one juror remarking, when the question of producing Mr. Chaloner was brought up, "The jury does not care to have Mr. Chaloner produced before them, and for that reason there is no necessity for an adjournment. We can render our verdict now;" and the foreman remarking, "It will be very hard to bring this jury here again and it is not their desire to have an adjournment of this inquest; they think the case can be submitted upon the testimony which has been given. They do not wish to have the respondent placed upon the stand." (Record p. 133.)

One of the commissioners, Mr. Ogden, called attention to the fact that the respondent could be produced in court without any injury or harm being done to himself (Record p. 133), in response to which the several witnesses were recalled to the stand and testified that

it would do the respondent temporary harm to force him to attend (Record p. 134).

The jury then hastily closed the case by rendering their verdict, which was followed in due course by the report of the commission and the judgment of the court declaring Mr. Chaloner insane and appointing one Prescott Hall Butler committee of his person and estate.

No guardian ad litem or other person to represent the respondent was present or took any part in the proceedings, and the Court's order does not recite any reason why the respondent was not present before the commission and jury, as required by law. The court's order recites that Mr. Flamen B. Candler of counsel for the petitioners was heard and Mr. Henry Lewis Morris, attorneys for the heirs at law and next of kin, but the only recital contained therein with reference to the representation of the respondent is in the words "and no one appearing in opposition thereto" (that is, to the petition and proceeding). (Record p. 136.)

The most striking portion of the testimony on which the proceedings last mentioned were based is that of Dr. Austin Flint as follows:

> "Q. And from what form of insanity is he now suffering?
>
> "A. He is a typical case of what is known as paranoia or chronic illusional insanity.
>
> "Q. In your opinion, Doctor, is that progressive and incurable?
>
> "A. It is incurable and progressive and will finally terminate in dementia. If I may be allowed to say, those cases frequently last for a very much longer time, quite different from paresis." * * *
>
> "Q. In your opinion, is Mr. Chaloner now

capable of taking care of his estate in person?

"A. No, sir; he is not."

* * * * * *

"A. Nothing could be more typical than that form of disease; it is an absolutely typical case from every point of view." (Record p. 126.)

It is now seventeen and one-half years since that testimony was given, and time has failed to agree with Dr. Flint in his diagnosis and prognosis. Mr. Chaloner has lived on his estate in Virginia continuously for the past seventeen years and has actually managed his own affairs throughout that time.

Immediately before the hearing of June 12, 1899, the Superintendent of the Bloomingdale Asylum at an interview between him and Mr. Chaloner, who was then sick in bed, when the question of whether Mr. Chaloner would attend the hearing was under discussion, granted to Mr. Chaloner parole, that is to say, the right to go freely about the grounds of the institution and outside the same without being accompanied by an attendant. Mr. Chaloner made frequent efforts to secure the services of counsel to institute habeas corpus proceedings and have himself legally freed from the institution. Among others to whom he applied were the late David B. Hill, of New York, and the late John W. Daniel, of Virginia. He also wrote a very full letter to his former Virginia counsel, Captain Micajah Woods (Record p. 156), the delivery of which he entrusted to said H. V. N. Philip and which was not delivered for many months after it was written, and then said Philip instructed said Woods to do nothing about the matter until he heard from him; the result of which was, of

course, that said Woods took no proceedings in the matter.

Despairing of ever obtaining counsel, Mr. Chaloner escaped from Bloomingdale, went to Philadelphia, where he placed himself under the observation of an alienist for a period of several months, and at the end of that time received the unqualified opinion of said alienist that he was sane. Not satisfied with this, he placed himself under the observation of another alienist at a sanitarium in the mountains of Pennsylvania for a period of about two months and again received the unqualified opinion that he was sane. Thereupon he returned to his home in Virginia, conferred with his counsel, Captain Micajah Woods, a proceeding to determine his sanity was regularly instituted in the county court of Albemarle County, State of Virginia, and the jury returned a verdict finding him to be of sound mind, and a judgment was duly entered thereon confirming the same. That judgment bears date of November 6, 1901, and under the full faith and credit clause of the Constitution of the United States is entitled to full and complete recognition throughout the United States, but notwithstanding the same, plaintiff in error, now at the bar of this court, continued in the anomalous situation of being, upon the records of the Supreme Court of New York, insane in that State, while actually, legally and judicially sane in the State of his citizenship and residence, Virginia. It might be stated in passing, as a matter of common knowledge, that within the present year Mr. Chaloner as a sane man and a litigant *sui juris* personally appeared and, with his counsel, prosecuted an action at law before a judge and jury of one of the courts of the United States in this District of Columbia and was awarded a verdict and judgment.

On November 15, 1901, said Prescott Hall Butler ten-

dered to the Supreme Court of New York his resignation as committee of the person and estate of the plaintiff in error by petition and prayed that Thomas T. Sherman, the defendant in error in this cause, be appointed committee in his stead. An order was entered by the Court accepting said recognition and making said appointment. The proceedings consisted of nothing but the petition signed and sworn to by Prescott Hall Butler and also signed by Evarts, Choate and Beaman as attorneys for petitioner, the consent of Thomas T. Sherman appended thereto to be appointed as committee, his acknowledgment of the same, and the order of the court thereon. There was absolutely no notice of the proceeding given to John Armstrong Chaloner or to anyone in his behalf. (Record pp. 145-149.)

On April 5, 1904, suit was brought in the United States Circuit Court for the Southern District of New York by John Armstrong Chaloner against Thomas T. Sherman, summons being issued on that date, and thereafter the complaint was duly served and filed.

In the complaint it is alleged "That heretofore at various times prior to the commencement of this action, and since November 6, 1901, the above-named defendant falsely and wrongfully claiming to be thereunto authorized by virtue of an alleged appointment as committee of the person and estate of the plaintiff in and for the State of New York, did unlawfully take, collect, have and receive for the use of this plaintiff, but without the consent or authority of the plaintiff, divers sums of money, chattels and negotiable securities, the exact nature and amount whereof are well known to the defendant but not accurately known to this plaintiff, but which included, among other things, the following moneys and property, to-wit: * * *"; following which the allegations are made in detail as far as the

facts were within the knowledge of the plaintiff (Record p. 3).

In the petition the order of the Supreme Court of the State of New York, dated November 19, 1901, appointing said Thomas T. Sherman as committee is attacked as having been made and entered without any notice whatsoever to the plaintiff and is alleged to be absolutely null and void. (Record p. 5).

The proceedings of June 23, 1899, and the proceedings of 1897 are attacked as being absolutely null and void and in no wise binding upon the plaintiff, and that in so far as the statutes of New York authorized, directed or sanctioned the said proceedings those statutes were and are repugnant to and in contravention of the Constitutions of the State of New York and of the United States and are absolutely illegal and void. (Record pp. 5 and 6.)

It is further alleged that the 1899 proceedings were instituted, prosecuted and determined without lawful or reasonable opportunity to the plaintiff to appear or be heard and at a time when he was unlawfully and falsely restrained and imprisoned in the Bloomingdale asylum, and that during the pendency of said proceedings he was at all times under duress and imprisoned and absolutely subject to the orders and control of the private corporation owning and operating said asylum, and at no time was free to appear, either personally or by counsel, before the Supreme Court of New York. (Record p. 6.)

It is further alleged that the order of March 10, 1897, was made without notice to the plaintiff and without any opportunity given to him to oppose or contest the making thereof, and without permission to the plaintiff to appear before the court in person or by counsel. (Record p. 7.)

The prayer of the petition is that plaintiff have judgment against the defendant for the sum of $263,523.65, with interest from April 4, 1904, besides costs and disbursements. (Record p. 8.)

Thomas T. Sherman, the defendant in error, answered said petition at length, the substantial effect of his answer being a denial of the allegations in the petition. *He did, however, admit that his appointment on November* 19, 1901, *was made without notice to the plaintiff* (*Record p.* 10). He further pleaded the various proceedings at length.

On the 18th day of October, 1909, the spelling of the name of the plaintiff in error was by order of the court changed on the record to "Chaloner," having theretofore been spelled on the record "Chanler." This was done pursuant to a stipulation between the counsel of record for the respective parties and at the request of the plaintiff in error.

Depositions of a number of witnesses and of the plaintiff in error were taken, the cause was heard in the United States District Court, the United States Circuit Court having been abolished, and the jury returned a verdict for the defendant by direction of the court. In the course of the trial the presiding judge excluded all evidence as to sanity, as to the luring of the plaintiff in error from Virginia to New York; all evidence as to perjury; all evidence as to the physical condition of the plaintiff in error; all evidence as to the commitment proceedings of 1897, evidence of fraud, and refused to receive either the record of the Virginia proceedings or the duly authenticated decree of the Virginia court holding the plaintiff in error to be sane.

In directing the verdict for the defendant, the court held that the New York statute was constitutional, notwithstanding it permitted a man to be committed to an

insane asylum without notice, having especial reference to the original commitment in 1897.

An appeal was taken to the United States Circuit Court of Appeals, where the case was heard and the action of the trial court sustained in an opinion written by District Judge Mayer. In that opinion the Court said:

> "The sole question is whether that judgment (of the New York Supreme Court) is void or was procured by extrinsic fraud so as to subject it to a successful collateral attack in another jurisdiction." (Record p. 185.)

Judge Mayer further stated that:

> "On March 10, 1897, an ex parte order was made by a Justice of the New York Supreme Court, committing Chanler as an insane person to the institution known as Bloomingdale Insane Asylum at White Plains, Westchester County. This order was in accordance with the insanity law of New York (laws of 1896, chapter 545) which permits a commitment without notice and that statute has been held to be constitutional.
>
> "Sporza vs. German Savings Bank, 192 N. Y. S.
>
> "Matter of Walker, 57 App. Div. 1."

Judge Mayer further stated that while Mr. Chaloner was an inmate of Bloomingdale under the commitment a proceeding looking to the appointment of a committee was commenced by a petition presented by two of his brothers to the Supreme Court in the county of New

York, which petition was accompanied by the affidavits of several physicians as to his mental condition and a notice of motion that on May 19, 1899, the petitioners would apply to the court for an order granting the prayer of the petition; that thereupon, on May 9, 1899, the court made an order requiring personal service on Chaloner of this order, the notice of motion, petition and affidavits, and that on the same day, May 9, 1899, personal service was made on Chaloner at the Bloomingdale asylum.

Judge Mayer further stated that on May 19, 1899, when the motion was returnable, no one appeared in opposition thereto, when *the court ordered a commission in the nature of a writ de lunatico inquirendo,* to be issued, which was to be executed in the county of New York *and that at least five days previous notice of the time and execution of the same be given to Chaloner* and to the person having charge of him, who in this instance was the medical superintendent of the asylum. It was further ordered that the commissioners might in their discretion dispense with Chaloner's attendance unless the jurors or any of them should require such attendance.

Judge Mayer further stated that notice *dated May 23, 1899,* that the commission would be executed on June 12, 1899, at four p. m. at the New York County court house was personally served on both Chaloner and the medical superintendent on June 6, 1899.

It may be here noted in passing that although this notice was dated twenty days prior to the date for the execution of the commission, June 12, 1899, it was not served until June 6, when there remained only five clear days between the date of service and the date of execution, and one of those five days was a Sunday. It also appears by the record (testimony of Dr. Lyon) that

for three weeks prior to June 12, 1899, plaintiff in error was ill and confined to his bed. Under such circumstances it might have been of material importance to Mr. Chaloner to have had the notice served upon him immediately following its date of May 23, 1899.

It should also be noted that Judge Mayer is mistaken in giving the date of the notice as May 23, 1899. On page 100 of the record this notice is set forth over the names of the three commissioners bearing date New York, May 31, 1899, *and it also appears on page* 95 *of the record that the commissioners were not sworn in as officers of the court until the* 5*th day of June,* 1899.

It appears by the affidavit of William White Whittaker on page 100 of the record, that he served the notice upon John Armstrong Chanler on June 6, 1899, at about two o'clock in the afternoon at the Bloomingdale asylum in the village of White Plains, Westchester County, State of New York. Considering the fact that the plaintiff in error was then lying ill in bed, and that more than two hours would be necessary to prepare and transport an ill man from the Bloomingdale asylum to the railway station and then by rail to the Grand Central Station and by means of city transportation to the New York County courthouse in New York City; and also considering the fact that one of the clear days between June 6 and June 12 was a Sunday, *it is perfectly apparent that the actual clear time given to the plaintiff in error by the said alleged notice was somewhat less than four full days.*

Judge Mayer and the other judges sitting with him sustained the rulings of the District court, and the judgment of that court was affirmed.

A writ of error was sued out and the case brought to this the Supreme Court of the United States for review.

The errors here assigned are as follows:

ASSIGNMENT OF ERRORS.

Now comes the plaintiff in error, John Armstrong Chaloner, herein by William D. Reed, his attorney, and respectfully submits and presents and files his assignment of errors complained of and says: That in the record of the proceedings in the above entitled cause in the United States Circuit Court of Appeals for the Second Circuit, there is manifest error in this, to-wit:

FIRST: That the learned United States Circuit Court of Appeals for the Second Circuit erred in affirming the judgment of the United States District Court for the Southern District of New York, dismissing the complaint filed by the plaintiff in error in said cause.

SECOND: That the learned United States Circuit Court of Appeals for the Second Circuit erred in affirming the decision of the Trial Court in holding that the plaintiff Chaloner's present condition of sanity never became an issue in the case and could never become so unless the court below had been justified in collaterally setting aside the decretal order or unless the defendant had adduced some evidence of present incompetency as an affirmative defense.

THIRD: That the learned United States Circuit Court of Appeals for the Second Circuit erred in affirming the decision of the trial court in excluding testimony to show the mental condition of the plaintiff, Chaloner, in 1899, and in holding that that issue could not be litigated in this action and was solely for the New York Courts.

FOURTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in hold-

ing that whether or not, in 1897, the plaintiff was lured into this State was immaterial.

FIFTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the New York Court had jurisdiction over the plaintiff in the 1899 proceedings, even assuming that the plaintiff was at all times a resident of Virginia.

SIXTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the question of plaintiff's residence was one of the facts in issue in the 1899 proceedings and having been there adjudicated that it cannot be collaterally attacked.

SEVENTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in affirming the rulings of the Trial Court in excluding testimony offered to show that the testimony in the 1899 proceedings was perjurious.

EIGHTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the plaintiff, Chaloner, failed to appear in the 1899 proceedings after due notice of the order or judgment to appear.

NINTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that care was exercised in serving the various notices of motions and proceedings on the plaintiff, Chaloner.

TENTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in its finding that

the plaintiff, Chaloner, deliberately failed to appear in the 1899 proceedings.

ELEVENTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in finding that full opportunity was afforded to the plaintiff, Chaloner, to appear in the 1899 proceedings.

TWELFTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the propriety and sufficiency of the notice to the plaintiff, Chaloner, of the 1899 proceedings are no longer open to question.

THIRTEENTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that in regard to the failure to give the plaintiff, Chaloner, notice of the resignation of the committee, Butler, and the appointment of Sherman, as committee, that there is no statutory requirement of notice in such a proceeding and that notice to the committee of a proposed removal is the only notice required.

FOURTEENTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that if notice were required the failure to give it is an irregularity which must be dealt with by the State Court of original jurisdiction.

FIFTEENTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the judgment of the New York Court was not a void judgment.

SIXTEENTH: That the learned United States Circuit

Court of Appeals for the Second Circuit erred in holding that the judgment of the New York Court must remain valid until reversed or set aside by the Courts of New York.

SEVENTEENTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the judgment of the Supreme Court of New York remains today in full force and validity.

EIGHTEENTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that if the petitioner's sanity is established and even if some of the requirements of the statute had been omitted or neglected or insufficient evidence of insanity was adduced, relief must be obtained in the court which appointed the committee.

NINETEENTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that this Federal Court has not jurisdiction to set aside or annul the judgment of the State Supreme Court.

WHEREFORE the said plaintiff in error prays that the judgment of the Circuit Court of Appeals for the Second Circuit and the judgment of the District Court of the United States for the Southern District of New York be reversed and such directions be given that full force and efficacy may enure to said plaintiff in error by reason of the allegations set up in the complaint filed in said cause.

DISCUSSION OF ERRORS ASSIGNED.

First: The first assignment of error is general in its terms and need not be separately discussed.

Second: *That the learned United States Court of Appeals for the second circuit erred in affirming the decision of the trial court in holding that the plaintiff Chaloner's present condition of sanity never became an issue in the case and could never become so unless the court below had been justified in collaterally setting aside the decretal order or unless the defendant had adduced some evidence of present incompetency as an affirmative defense.*

Plaintiff in error's sanity was alleged in paragraph 3 of the complaint (R. 2), and, in the Fifteenth paragraph of the answer (R. 19), it was denied; and the defendant in error there alleged

> "That the plaintiff at all of the times mentioned and referred to in the said complaint, was, and now is, a lunatic and a person of unsound mind, and that, by reason thereof, he is incompetent to manage himself or his affairs or to employ counsel or to institute or prosecute this action."

It thus appears clearly that Mr. Chaloner's "present condition of sanity" was an issue, and that his right to bring the suit was questioned on that ground.

However, this is not a case of collateral attack in the ordinary sense. This is a case founded upon a judgment of sound mind rendered by a court of record of the State of Virginia on November 6, 1901, which is here set up against a judgment dated June 12, 1909, of a court of record of the State of New York, which we allege to be absolutely void, and also against the order on which the

defendant in error must stand by which the Supreme Court of New York attempted to appoint him committee under date of November 19, 1901, *thirteen days after Mr. of the State of his citizenship and residence. And the said order made by the Supreme Court of New York on November* 19, 1901, *was made as the result of a mere consent arrangement between Prescott Hall Butler and Thomas T. Sherman, without the shadow of notice to the plaintiff in error or to anyone in any wise connected with him, and without a hearing.*

The general rule as to collateral attack on judgments and decrees presupposes that the tribunal rendering the same has jurisdiction of the person and of the subject-matter. In this case, however, the New York Court acted without authority. The statute under which it proceeded did not provide for notice and the attempted notice to Mr. Chaloner was of no effect. It was in law no notice. The circumstances attending the case were such that he had no opportunity to be heard.

When a court acts without authority its judgments, orders and decrees are nullities; they are not voidable, but simply void, and their invalidity may be shown in a collateral proceeding.

This court in the case of Smith vs. Woolfolk, 115 U. S., 143, said that

> "The decree of a court rendered against a party who has not been heard, and has had no chance to be heard, is not a judicial determination of his rights, and is not entitled to respect in any other court." Windsor vs. McVeagh, 93 Wall. 274.

In Smith vs. Woolfolk, after a final decree had been rendered upon a bill in equity to settle an estate, thereafter one of the parties filed in the same case a petition

setting up a matter not included in the original bill and the Circuit Court made an order that the defendants should answer the same on or before a certain day and that in default thereof the petition should be taken as confessed and that service of said order "By letter or on attorneys of said parties, be sufficient service thereof." The Statutes of Arkansas in the courts of which said proceeding was conducted, did not authorize the service of process in either of the methods directed by the order. The sheriff returned that he had served the order by mailing copy thereof to the defendants, directed to their address, without naming it. One Carlton, upon whom, as attorney for the defendants, it appeared a copy of the order had been served, filed a paper in the case in which he said he was not their attorney, but the attorney of the petitioner and disclaimed any interest in the cause on behalf of the defendants. Upon these facts, the trial court decided that there had been sufficient service of the order.

The Supreme Court of the United States held that after a decree disposing of the issues in accordance with the prayer of the bill has been made, it is not competent for one of the parties, without a service of new process or appearance, to institute further proceedings on new issues and for new objects, although connected with the subject-matter of the original litigation, by merely giving the new proceedings the title of the original cause, and concluded in the language first above quoted.

In Windsor vs. McVeagh this Honorable Court said:

> "That there must be notice to the party of some kind, actual or constructive, to a valid judgment affecting his rights, is admitted. Until notice is given the Court has no jurisdiction in any case

to proceed to judgment, whatever its authority may be, by the law of its organization, over the subject-matter. But notice is only for the purpose of offering the party an opportunity of being heard upon the claim or the charges made; it is a summons to him to appear and speak, if he has anything to say, why the judgment sought should not be rendered. *A denial to the party of the benefit of a notice would be in effect to deny that he is entitled to notice at all, and the sham and deceptive proceedings had better be omitted altogether.* * * *"

"The law is, and always has been, that whenever notice of citation is required, the party cited has the right to appear and be heard; and when the latter is denied the former is ineffectual for any purpose. The denial to the party in such case of the right to appear is in legal effect the recall of the citation to him. * * *"

Windsor vs. McVeagh, 93 U. S., 274, 277 and 278.

The foregoing language was used by this Honorable Court in a proceeding in which the judgment in question was collaterally attacked.

In Chaloner vs. Sherman, now at the bar of this Honorable Court, the notice served was one not required or authorized by the Statute under which the proceeding was conducted and was therefore no notice. The statute is part of a title or chapter of the New York Code of Civil Procedure, which has been so carefully worked out and amended as to preclude the idea that its enactment left in force any provisions of the common law on chancery practice to aid it

The court's order required at least a five days' notice, and we have shown that the effective period allowed the respondent was less than four days. The notice was served upon the respondent while he was under duress of imprisonment and while he was confined to his bed with sickness which the medical superintendent of the private asylum, Bloomingdale, testified was real and not pretended. (Rec. page 115.) The proceeding was conducted at the County Court House in New York City, twenty miles away from the place of imprisonment of respondent, when it could have been conducted in White Plains where that place of imprisonment was situated. It was conducted at four o'clock in the afternoon, and the busy men who constituted the jury were so concerned to be relieved of their duties without another session to permit the respondent to be brought before them, that they insisted upon closing the matter and rendering their verdict the same afternoon, notwithstanding one of the commissioners, Mr. Ogden, manifested by his questions a feeling that the respondent should be brought before the commission and jury.

The respondent's presence was dispensed with by the order of the court in advance, unless by condition subsequent, to-wit, the demand of the jury "some or one of them shall require his attendance before the jury." (Rec. 93.) It is true that the court gave the commissioners discretion to dispense with the attendance, but at the same time left the matter to the jurors, some or one of them, and the record will show that by the demands of the jurors to get away, the manifest disposition of Commissioner Ogden to require the production of the respondent was overruled, and the personal convenience of the jurors thwarted the slight chance that had existed for the doing of justice by the production of the respondent at such time as he might be able to attend. (Rec. 133.)

We respectfully submit that in the light of all the facts which we have just pointed out, the language of Windsor vs. McVeagh applies here as follows:

> "That whenever notice of citation is required the party cited has the right to appear and be heard; and when the latter is denied the former is ineffectual for any purpose. The denial to the party in such a case of the right to appear is in legal effect the recall of the citation to him."

Third: The third assignment of error is

"Third: That the learned United States Circuit Court of Appeals for the Second Circuit erred in affirming the decision of the trial court in excluding testimony to show the mental condition of the plaintiff Chaloner in 1899, and in holding that that issue could not be litigated in this action and was solely for the New York courts."

As we contend that the statute under which the 1899 proceedings were conducted was void by reason of unconstitutionality, and that the proceedings themselves were void, and those points in the case will be discussed later in connection with assignments of error more directly addressed to them, we consider that the testimony as to Mr. Chaloner's sanity in 1899 was improperly excluded by the trial court. We contend that Mr. Chaloner's sanity was fully established by the decree of the Virginia court rendered November 6, 1901, and was conclusive upon this point, and under the full faith and credit clause of the Constitution of the United States superseded the 1899 judgment of the Supreme Court of New York. As in our view of the case the 1899 New York judgment was both void and superseded, we think the action of the court in excluding the testimony as to

Mr. Chaloner's sanity in 1899 was clearly erroneous. Furthermore, sanity was made an issue by paragraph III of the complaint and paragraph "Fifteenth" of the answer.

"Fourth: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that whether or not in 1897 *the plaintiff was lured into this State was immaterial."*

The trial court excluded all evidence of the fact that the plaintiff was lured by his family and false friends from his home in Virginia to the State of New York, on the ground that the same was immaterial, and the United States Circuit Court of Appeals affirmed this holding. (Rec. 39.)

The evidence of luring was offered as one part of the evidence to establish fraud in the 1897 proceedings, which fraud we contend was continuing fraud and nullified the 1899 proceedings.

In *Olean Street Railway Company vs. The Fairmount Construction Company,* 55 Appellate Division, 292, it was held as follows at page 293:

"The Court will not sanction any attempt by fraud or misrepresentation to bring a party within its jurisdiction."

(*Snelling vs. Watrous,* 2 Page, 314; *Carpenter vs. Spooner,* 2 Sandf., 717; *Metcalf vs. Clark,* 41 Barb., 45; *Beacom vs. Rogers,* 79 Hun. 220.)

And at page 294:

"We think that good faith and a due regard for the proprieties of the case required of the plaintiff that when the negotiations for a settlement of the matter which brought the parties together terminated, a reasonable opportunity should have been afforded the defendant's president to leave the city and state before any attempt was made to serve a summons upon him; and

inasmuch as this was not done, the plaintiff ought not to be permitted to take advantage of a course of action, which, if not amounting to actual fraud and deceit, was certainly equivalent thereto, for it involved a breach of the confidence which King had reposed in the bona fides of the invitation of the plaintiff's president to place himself within the jurisdiction of the court." (*Allen vs. Wharton*, 13 N. Y. Supplement, 38; *Higgins vs. Dewey*, 34 New York State Reports, 692.)

The decisions are uniform that deceit in bringing a party within the court's jurisdiction vitiates the service of legal process.

Even if there were no authorities directly in point on this question of luring, we submit that the evidence of luring should have been admitted as a necessary part of the plaintiff's evidence to establish fraud in his attack upon the New York judgment of 1899.

"Extrinsic or collateral fraud" is defined to be actual fraud, such that there is on the part of the person chargeable with it the *malus animus;* the *mala mens* putting itself in motion and acting in order to take an undue advantage of some other person for the purpose of actually and knowingly defrauding him. There is an admitted exception to this general rule in cases where, by reason of something done by the successful party to the suit, there was, in fact, no adversary trial or decision of the issues in the case. Where the unsuccessful party has been prevented from exhibiting fully his case by fraud or deception practiced on him by his opponent, as by keeping him away from the court * * * or where the defendant never had knowledge of the suit, being kept in ignorance of the acts of the plaintiffs, or where an attorney fraudulently or without authority assumes to represent a party and connives at his defeat * * *. *These and similar cases which show that there*

never has been a real contest in the trial or hearing of the case, are reasons for which a suit may be sustained to set aside and annul a former judgment or decree and open the case for a new and fair hearing. *Flood vs. Templeton,* 92 Pacific, 78, 81; 152 California, 148; 13 L. R. A. (N. S.) 579 (quoting and adopting *United States vs. Throckmorton,* 98 U. S., 61).

By extrinsic or collateral fraud for which a court of equity will set aside a judgment by a court of competent jurisdiction is meant some act or conduct of the prevailing party which has prevented a fair submission of the controversy. *Garret Biblical Institute vs. Meinhard,* 108 Pacific, 80, 81; 82 Kansas, 338.

The proceedings which culminated in the appointment of the defendant in error as committee of the person and estate of the plaintiff in error were all instituted and conducted as the result of a conspiracy on the part of the brothers and sisters, cousin, and false friends of the plaintiff in error to have him adjudged insane and incarcerated in a private asylum, and the evidence of luring was admissible as one of the overt acts connected with the conspiracy, and as one of the manifestations of fraud affecting all the said proceedings.

Fifth: That the learned United States Circuit Court of Appeals for the second circuit erred in holding that the New York Court had jurisdiction over the plaintiff in the 1899 proceedings, even assuming that the plaintiff was at all times a resident of Virginia.

Sixth: That the learned United States Circuit Court of Appeals for the second circuit erred in holding that the question of plaintiff's residence was one of the facts in issue in the 1899 proceedings and having been there adjudicated that it can not be collaterally attacked.

These two assignments will, in effect, be covered by our argument on the point that the New York proceedings were void, and need not be separately discussed.

Seventh: That the learned United States Circuit Court of Appeals for the second circuit erred in affirming the rulings of the trial court in excluding testimony offered to show that the testimony in the 1899 proceedings was perjurious.

As in the case of the fourth assignment of error on the point of luring the plaintiff from Virginia to New York, the evidence offered to prove that the testimony in the 1899 proceedings was perjurious was offered with other evidence upon the theory that all the evidence so offered taken together would establish such fraud as would lay the judgment open to attack in this case.

The offers to prove perjurious statements will be found on pages 26, 27, 31, 43, 44, 53 and 54 of the record.

On page 26, folio 50, a printed copy of the 1897 lunacy proceedings was offered and particularly that portion of the same containing the statement of "J. A. Chanler's" conduct and actions in Virginia. The offer was objected to, objection sustained, and exception noted. (Page 27.)

On pages 53 and 54 the testimony of Mr. Winthrop Chanler in which he admitted that the statements contained in the original petition of 1897 were untrue, was offered, objected to, objection sustained, and exception noted.

In the original petition in the 1897 proceedings, Winthrop A. Chanler, Lewis S. Chanler, and Arthur A. Carey stated as follows:

"Mr. J. A. Chanler has for several months,

while at his home in Virginia, been acting in a very erratic manner. He has limited himself to a peculiar diet, he has burned his hand by carrying hot coals in it, he has devised many peculiar projects, such as a roulette scheme to beat Monte Carlo, and he gives as his reason for these and other acts that he is inspired by a spirit which directs him."

The oath to that petition is as follows:

"W. A. Chanler, Lewis S. Chanler, and A. A. Carey, being duly sworn, depose and say *that they have read the foregoing petition and know the contents thereof, and that the same is true to the knowledge of deponents,* except as to the matters therein stated to be alleged on information and belief, and as to those matters they believe it to be true." (Rec. 109.)

It should be noted by the court that the statements above quoted as to Mr. Chanler's conduct and actions were not alleged upon information and belief.

Counsel for defendant in error, in his oral argument, endeavored to minimize this matter with the statement that the petitioners merely omitted to notice that in their verification the statement was not alleged to be made upon information and belief. *When a man's sanity before the law, his personal liberty, and his property are at stake, and are the subject of a petition, it is incumbent upon the petitioners to be careful what they swear to.*

Mr. Winthrop A. Chanler testified in this case November 16, 1905, and his testimony is set forth in the "Brief of Plaintiff in Error," on pages 382 to 401.

On page 399, by the answer in the middle of the page,

he admitted that neither he, his brother Lewis, nor his cousin Arthur A. Carey saw John Armstrong Chaloner, this admission having particular reference to the truth or falsity of statements made by these three men in the petition on which Mr. Chaloner was committed.

This testimony of Winthrop A. Chanler was duly offered in evidence, objected to, objection sustained, and exception noted. See the record, pages 53 and 54.

Said Winthrop A. Chanler, in his said deposition, was asked and answered as follows:

"Q. Did Lewis personally know anything about the condition of your brother's health?

"A. I don't think so.

* * * * * *

"Q. Now did Mr. Carey know anything about the condition of your brother's health at the time of the commitment?

"A. Except what Doctor Fuller told him.

"Q. I mean in addition to what he was told by Doctor Fuller and by you, did Mr. Carey know anything at all about the condition of your brother's health?

"A. No, not at that time.

"Q. So that Mr. Carey had not seen your brother for at least two years prior to the time of commitment?

"A. I don't know that.

"Q. Wasn't that discussed between you when Mr. Carey came down here?

"A. It may have been.

"Q. Now why, I ask you, that is because you probably remember that in your application for your brother's commitment you and Mr. Lewis Chanler and Mr. Carey sign a petition in which

you state that 'Mr. John A. Chanler has, for several months, while at his home in Virginia, been acting in a very erratic manner. He has limited himself to a peculiar diet; he has burned his hands by carrying hot coals in them; he has devised many peculiar schemes, such as a roulette scheme to beat Monte Carlo, and he has given as a reason of these and other acts that he is inspired by a spirit which directs him; for the past three weeks entirely he has constantly talked of these delusions; has neglected his health; has injured his person and has been at times highly excited,' and then all three of you sign an affidavit stating that you knew the contents of the foregoing petition and that the same was true of your own knowledge except as to matters therein stated to be alleged on information and belief, and there are no matters in the petition which are stated on information and belief; now, how did you come to make that affidavit that you made these facts of your own knowledge?

"A. *Can I say I was told this and that by so and so and had seen him and talked with him? You know I didn't see him myself. You know Lewis nor Carey didn't see him.*"

(Brief of Plaintiff in error, pages 398-399.)

These are strange admissions coming from an original petitioner in this case, a brother of the man whom he and his brother and cousin had committed upon their false petition, to a private insane asylum; and it is even stranger to hear distinguished counsel for defendant in error make light of the same and attempt to gloss them over before this Honorable Court.

Many offers were made to prove that the plaintiff was sane, and to prove what his real physical and mental condition was, both at the time of the 1897 proceedings and the 1899 proceedings. These offers were objected to, objection sustained, and exceptions noted.

We call especial attention to the offer of the testimony of the witness Pedro N. Piedra (R. p. 31).

This witness was the trained nurse who attended Mr. Chaloner in Bloomingdale.

At the foot of page 31 of the Record, counsel for the plaintiff in error inquired of the court whether he would be permitted to examine this witness at all about any physical or mental condition of Mr. Chaloner in 1899, to which the court replied, "No."

Counsel then suggested to the court: "The purpose of it, as I say, being to show that these proceedings were fraudulent; that the man was perfectly sane and that they knew it; and that the doctors stated so to him."

This offer of proof goes not only to the question of perjury by the alienists and lay-witnesses in the 1899 proceedings, but goes to the question of conspiracy and fraud as affecting those proceedings.

On page 43 of the Record, at the foot of the page, evidence was offered to contradict the evidence of the alienists and to show that the same was false, perjurious, and fraudulent; and that the court was deceived and misled. Objection was made and sustained, and exception noted.

"Eighth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the plaintiff, Chaloner, failed to appear in the 1899 *proceedings after due notice of the order or judgment to appear."*

"Ninth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that care was exercised in serving the various notices of motions and proceedings on the plaintiff, Chaloner."

"Twelfth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the propriety and sufficiency of the notice to the plaintiff, Chaloner, of the 1899 *proceedings are no longer open to question."*

The above quoted eighth, ninth and twelfth assignments of error will be treated together, because they raise the whole question of notice.

We have printed, and there has been handed to the Court, a copy of almost the whole of Title VI of the Code of Civil Procedure of New York. The sections omitted we have considered wholly immaterial here. This paper is entitled "Appendix to argument of counsel for plaintiff in error," and is appended hereto.

This Title VI was clearly intended by the New York Legislature to set forth fully the procedure in cases involving the appointment of a committee for an alleged lunatic. This title as it stood prior to 1895 is set forth in Banks & Bros. edition of the New York Code of Civil Procedure, issued in 1894. Section 2323-a does not appear in said title in that edition. It was added in 1895, when the whole title was thoroughly revised by the legislature. In that year, eleven of the thirty sections in the title were amended or added.

Prior to 1895 there was no provision in the title for notice to be given to a lunatic or an alleged lunatic. In making a general revision of the title, and inserting section 2323-a, the legislature specifically provided in that section that in the cases covered by it "Notice of

the presentation of such petition shall be personally given to such person." That section is expressly limited to cases of persons whose incompetency has been established, and who are inmates of State institutions at the time when the petition is presented.

Section 2325, under which the proceedings in this case were conducted, contains no requirement or authorization for notice to the alleged lunatic.

There can be no doubt that when the State legislature made the general revision of Title VI it did exactly what it intended to do, namely, authorized and required notice in the cases covered by section 2323-a, and, by intentional omission, excluded either authorization or requirement of notice to the alleged lunatic in all other cases.

This being so, the statute under which the proceedings of 1899 were conducted and the judgment of June, 1899, rendered, was and is unconstitutional and void, and, as a consequence of that condition, the entire 1899 proceedings, including the judgment therein, are void and of no effect, and the order entered November 19, 1901, appointing the defendant in error, Thomas T. Sherman, committee, is absolutely void.

This matter is discussed very fully in the brief of plaintiff-in-error at pages 548-564; and it is only necessary here to cite a few additional authorities.

The case of Stuart v. Palmer (Brief of Plaintiff-in-Error, pp. 550-551) has been referred to in many subsequent cases, a few of which we mention and quote from as follows:

In the matter of Grout, 105 N. Y. App. Div., 98, 109.

The Federal courts and nearly all State courts have for many years united in so declaring, and the Court of Appeals, as early as 1878, in Stuart vs. Palmer declared that a hearing or an opportunity to be heard, in

which the citizen may defend, enforce and protect his rights, is absolutely essential to constitute due process of law; which principle has since been followed by all our courts, and is already now so firmly established as the law of this State as to be beyond controversy. So carefully have the courts guarded this constitutional and secured right of the citizen that the statutes omitting this required essential have uniformly been condemned, even where it appeared, as it does in this case, *that the party proceeded against was permitted, through the courtesy of the court, to have and did have notice of the proceeding and an opportunity to be heard.* It is not enough that a person may by chance have notice, or that he may as a matter of favor or courtesy have a hearing; the law itself to be constitutional must require notice and give a right to a hearing. It matters not upon the question of the constitutionality of such law that the questions involved have been fully decided. The essential validity of the law is to be decided, not by what has been done under it, but by what may by its authority be done.

(Stuart vs. Palmer, 74 N. Y., 183; Gilman vs. Tucker, 128 N. Y., 190; Coxe vs. State, 144 id., 396; Colon vs. Lisk, 153 id., 188.)

City of Brooklyn vs. Franz, 33 N. Y. Sup., 870:

Notice of some kind is essential, and, because there is no provision in this statute for a notice or an opportunity to be heard, it is violative of the constitutional provisions for the protection of property rights.

People vs. Dickinson, 36 N. Y. Sup., 749:

In Stuart vs. Palmer it was first authoritatively decided that no law authorizing the imposition of taxes or assessments by local authorities is valid, unless the

law itself provided for a hearing of the owners of the property to be assessed. This rule has never since been departed from by the Court of Appeals, but, on the contrary, has often been reaffirmed.

In re Mayor vs. City of New York, 70 N. Y. Sup., 228:

It is manifest, from a reading of the above-cited statute that, unless included by permissible construction of Section 2, there is a total absence of provision for notice to the parties against whose property an assessment might be imposed. Without such a provision an act which authorizes an assessment must be deemed unconstitutional, since it has the effect of depriving the owner of the property to be assessed of his property without "due process of law."

People ex rel. Schofield vs. Schoonover, 47 N. Y. App., 281:

It is true that no valid tax can be imposed, except upon notice and opportunity for a hearing given to the taxpayer, and a statute which does not provide for such notice and hearing is unconstitutional and void.

People ex rel Barnard vs. Wemple, 117 N. Y., 84.

It is said that notice was given to the owner by letter from the Comptroller's Office. That was a very proper thing to do but did not affect the occupants or help the case; for the question always is, not what was done, but what might be done under the law.

People ex rel N. Y. Edison Co. vs. Willcox, 207 N. Y., 108.

There is no provision under the statute requiring the Public Service Commission to give notice to the appellant or any one else of the application of the respondent

for leave to issue certificates. Therefore the decision of the commission could not conclude the appellant on the question of the respondent's franchise in any litigation where it may be entitled to raise the question. The voluntary appearance of the appellant before the commission would not give any greater validity to the determination of the commission, because consent cannot confer jurisdiction.

Security Trust Co. vs. The City of Lexington, 205 U. S., 323, 333.

If the statute did not provide for a notice in any form, it is not material that as a matter of grace or favor notice may have been given of the proposed assessment. It is not what notice, uncalled for by the statute, the tax payer may have received in a particular case that is material, but the question is, whether any notice is provided for by the statute.

Central of Georgia Ry. vs. Wright, 207 U. S., 127, 138.

This notice must be provided as an essential part of the statutory provision and not awarded as a matter of favor or grace.

Remsen et al. vs. Wheeler, 105 N. Y., 579.

The rules laid down in Stuart vs. Palmer are salutary and important, and for the protection of personal rights and private property must be enforced in all cases to which they are applicable.

In People ex rel Peabody vs. Chanler, 133 N. Y. App. Div., Judge Gaynor, dissenting, said:

> "It is not disputed that alleged lunatics, the same as alleged criminals, may be temporarily

committed without a hearing lawfully in the discretion of courts and judges, i. e., until their case can be heard in conformity with the requirements of due process of law; but they cannot be committed permanently, any more than alleged criminals, without a hearing of a judicial nature on notice which, and nothing short of which, is due process of law; and any statute permitting the like is void. This statute prescribes no notice or hearing and none was given or had. This latter is unimportant, however, for the test of the validity of a statute is not what was done, but what may be done under it. All of the cases now to be cited decide the general principle, and several of them are still more in point, as they deal with statutes the same or similar to the one now in question.

74 N. Y., 183.
23 Misc., 9.
111 U. S., 701.
182 U. S., 427 (Simon v. Craft).
34 App. Div., 363.
32 Mich., 1.
136 N. C., 415.
134 Cal., 626.
55 Minn., 467.
139 Fed., 846.
65 Me., 120.
14 Mass., 222.
131 N. Y., 546.
1 L. R. A. (N. S.), 540.

The above is from the Thaw case, which involved the right to hold an alleged insane criminal without a notice and hearing on the subject of his sanity.

"Tenth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in its finding that the plaintiff, Chaloner, deliberately failed to appear in the 1899 proceedings."

"Eleventh. That the learned United States Circuit Court of Appeals for the Second Circuit erred in finding that full opportunity was afforded to the plaintiff, Chaloner, to appear in the 1899 proceedings."

The plaintiff in error did not deliberately fail to appear in the 1899 proceedings, and full opportunity was not afforded him to appear therein. The alleged notice which was handed to him was, in law, no notice. (R. 100.) The court provided, in the order by which the Commission in Lunacy was created, that Mr. Chaloner should be given at least five days' notice before the proceedings. (R. 92.) The alleged notice bears date May 31, 1899, and, in some of the proceedings it is stated as May 23, which is erroneous. In the Record it is May 31. (R. 100.) The three commissioners signing the alleged notice were not sworn in until June 5, 1899. (R. 93.) The so-called notice was delivered to Mr. Chaloner on June 6, at 2 o'clock in the afternoon, as shown by the affidavit of the process-server, at Bloomingdale Asylum, at White Plains. It named the time of the hearing as June 12, 1899, at 4:00 o'clock p. m. There was, necessarily, a Sunday intervening. Mr. Chaloner was, and had been, sick in bed for three weeks, according to the testimony of Dr. Lyon, Superintendent of Bloomingdale. Allowing for the time necessary for a sick man to get ready and get out of his bed and cell, and go to the court house in New York City, and allow-

ing for the fact that one of the intervening days was Sunday, there were less than four clear days notice for Mr. Chaloner to attend that hearing on June 12th. If due care had been exercised to preserve his rights, the hearing would have been held at White Plains, practically at the door of the asylum, and the commissioners would have taken their oath promptly after May 31, the date of the Commission, and notice would have been served immediately upon Mr. Chaloner, instead of giving him a matter of only about four days' actual notice.

Counsel for defendant in error has stated that, in the passage of testimony quoted in the opinion of Judge Mayer,

> "It appears most plainly that he did not appear at the jury proceedings in 1899 because he did not wish to, and not because he was in any sense unable."

The portion of the deposition of the plaintiff in error referred to by counsel for the defendant in error, and by Judge Mayer, is set forth in full in the brief of plaintiff in error on pages 117 to 135; but the same justifies no such construction as that placed upon it by said counsel and said Judge.

We particularly request the court to read pages 132 to 135 of the brief of plaintiff in error, which contain the portion of the testimony most directly bearing upon this matter, but which wholly fails to bear the erroneous construction placed thereon by counsel for the defendant in error and the learned judge who delivered the opinion of the Circuit Court of Appeals.

We especially invite the attention of the court to that portion of the brief of plaintiff in error entitled: "Analysis of Mayer, J's., opinion in appeal of Chaloner

v. Sherman," pp. 80 to 138, of the brief of plaintiff in error, in which the evidence is fully reviewed, and in which it is shown that the conclusions drawn by Judge Mayer from the evidence are erroneous.

The original letter from plaintiff in error to Micajah Woods, referred to by Judge Mayer (R. p. 188), in the hand-writing of the plaintiff in error is on file in the Clerk's office of this Honorable Court at the present time, having been transmitted from the United States District Court for the purposes of the hearing of this case. A reference to the same will demonstrate that plaintiff in error was not insane when he wrote the same from Bloomingdale on July 30, 1897. *It is further to be noted that his statement made at that time, as to whether he would go before a jury, is no evidence of his physical condition or ability to go before a jury two years later, namely, in* 1899, *or of his intentions with reference to appearing before a jury in* 1899. A copy of said letter appears in the record on page 156.

> *"Thirteenth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that in regard to the failure to give the plaintiff, Chaloner, notice of the resignation of the committee, Butler, and the appointment of Sherman, as Committee, that there is no statutory requirement of notice in such a proceeding and that notice to the committee of a proposed removal is the only notice required.*
>
> *"Fourteenth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that if notice were required the failure to give it is an irregularity which must be dealt with by the State Court of original jurisdiction."*

The facts on this point were fully set forth in the opening statement of the case, and the law is set forth in the brief of the plaintiff in error. We add the following fuller quotations and additional references.

In *Matter of Andrews*, 192 N. Y., 515 (decided September, 1908), it was held:

Syllabi:

> While the Supreme Court has general jurisdiction over the persons and estates of incompetent persons, it has no power to remove the committee of such a person or appoint a successor thereto without the institution of a proceeding for the purpose, upon notice to the relatives and persons interested in the person and estate of the incompetent.
>
> *Code, Civil Procedure,* Sections 2339, 2343, 2323a, and 2325.
>
> Although the Code authorizing the removal or suspension of the committee of an incompetent person, in the discretion of the Court, contains no provision for notice to the person interested in the person and estate of the incompetent, nevertheless such committee cannot be removed and its successor appointed except as provided in Section 2342, which contemplates the institution of a proceeding for that purpose, upon notice to such persons as would be entitled to notice upon the appointment of such a committee under Sections 2323a and 2325.

The Court said:

> "We have recently had occasion to consider this

subject so fully in the case of Sporza vs. German Savings Bank, that any further discussion of the origin, development and explanation of the present jurisdiction of our Supreme Court over persons of unsound mind would involve only an unnecessary repetition. *It may be assumed that the jurisdiction is broad enough to render the order of removal or substitution without notice, such as was made in the present case, unassailable in a collateral proceeding.* Here, however, the regularity of the order is directly attacked from the appeal of the order itself, and we are called upon to decide whether steps which led up to that order were taken in the manner prescribed by law. * * * *If an incompetent person has been committed to a State institution and is an inmate thereof,* a committee cannot be appointed without personal notice of the presentation of the petition for appointment to such incompetent person, and also to the husband or wife, if any, or if none, to the next of kin named in the petition, and to the officer in charge of the institution of which such person is an inmate. (Sec. 2323a.)

"In all other cases the court must require notice of the presentation of the petition to be given to the husband or wife, etc., or to a certain specified public officer, unless sufficient reasons exist for dispensing with such notice, to be shown in the petition. Section 2325. These provisions of the statute manifest a legislative intent that notice shall be given if possible to the relatives of the alleged lunatic of an application to the court for the appointment of a committee."

"These provisions of the statute manifest the

legislative intent that notice shall be given, if possible, to the relatives of an alleged lunatic of an application to the court for the appointment of a committee. In the section of the Code, however, which provides that the committee may be suspended or removed in the discretion of the court, nothing is said about any notice of an application for removal or as to the necessity of any special proceeding for that purpose; and hence it seems to be inferred that no notice is requisite."

The Court pointed out that the subsequent provision in the statute indicates that inference to be incorrect.

"Here we have, as it seems to me, by the plainest implication a legislative declaration that even where the propriety of the removal of the committee of a lunatic is suggested by facts coming to the knowledge of the judge, either officially or otherwise, a special proceeding for such removal should be instituted before the committee is actually removed. Such a course of procedure clearly contemplates an application to the court in behalf of the incompetent person, of which notice shall be given to those interested in his person or property."

"'The present Constitution of the State, adopted in 1894,' continues the Supreme Court, 'with general jurisdiction in law and equity.' (Const. Art. VI, Sec. 1.) This preserves the jurisdiction over lunatics and their property which was originally vested in the chancellor and Court of Chancery and was subsequently transferred to

the old Supreme Court, as it existed prior to the adoption of the Constitution of 1846. That jurisdiction, however, as to the manner of its exercise may be regulated by the Legislature, *and where this has not been done, it is to be exercised according to the established practice of the courts in lunacy cases.*"

"I have not been able to find any reported cases in this State in which a committee has been removed by the chancellor or a judge acting sua sponte and without notice. Great confusion and conflict might arise if such orders could properly be made by the ninety-seven Supreme Court justices in this State, each one of whom may exercise the powers of a chancellor."

"The parties entitled to notice of a proceeding for the appointment of a committee should have notice of the proceeding for his removal contemplated by Section 2342."

In Matter of Cooper, 105 N. Y., 449, the Court said:

"In the selection of a committee of the person of an incompetent, the court should exercise the greatest care in order that the rights of all parties interested may be subserved. The welfare and happiness of the incompetent himself is the important consideration, but the wishes and interests of the relatives, if they coincide with the incompetent's welfare, should not be ignored."

This case arose on a petition for the determination of competency, and the jury found respondent insane.

When the question of appointment of a committee was considered, a dispute arose between the relatives and the attorney for the incompetent, who objected to the relatives' selection, and insisted that a trust company be appointed.

The court quoted and followed Matter of Lamoree, 32 Barb., 122, to the effect that when an incompetent's estate is large and valuable (especially where there is a dispute as to who shall be appointed committee), the matter should be referred to a referee to take testimony before the court orders the appointment of a committee.

> *"Fifteenth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the judgment of the New York Court was not a void judgment."*

This assignment of error has been fully covered in the discussion of the question of notice and the unconstitutionality of the statute.

> *"Sixteenth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the judgment of the New York Court must remain valid until reversed or set aside by the courts of New York.*
>
> *"Seventeenth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the judgment of the Supreme Court of New York remains today in full force and validity.*
>
> *"Eighteenth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that if the petitioner's sanity is established and even if some of the requirements*

of the statute had been omitted or neglected or insufficient evidence of insanity was adduced, relief must be obtained in the court which appointed the committee.

"Nineteenth. That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that this Federal Court has not jurisdiction to set aside or annul the judgment of the State Supreme Court."

All the phases of the case embraced in the assignments of error above quoted have been fully covered in the brief of the plaintiff in error; and any further discussion of the same would be surplusage.

The two cases referred to by Judge Mayer as holding the New York statute constitutional are worthy of especial attention, and we, therefore, treat the same as follows:

Sporza v. German Savings Bank, 192 N. Y., 8. (Apr. 7-08.)

On November 22, 1897, one Ida Jetter opened a savings account with defendant bank. July 20, 1902, she married Frank Sporza, and was subsequently committed to the Manhattan *State* Hospital at Ward's Island, under the name of Ida Jetta, "in the manner provided by the State Insanity Law," and was supported by the State. May 23, 1908, the Superintendent of the Asylum petitioned for the appointment of a committee, and the plaintiff was appointed and demanded payment by the defendant bank of $1,309.72, balance of her deposit. Payment was refused on the grounds (1) that the name was misspelled, and (2) that section 2323-a of the Code of Civil Procedure, under which commitment was had,

was in violation of the U. S. Constitution.

The court observed, at the outset, that the constitutional question was one of importance, "in view of the fact that it (the law) has been in force since 1895, and that several hundred appointments of committees have been made annually under it, and not only personal estate but title to real property has been passed thereby."

The opinion of the court contains an elaborate review of the decisions showing that, prior to the enactment of lunacy laws, the power and control over idiots and lunatics was inherent in courts of chancery, which courts, in order to satisfy themselves, took proper precaution to safeguard the interests of alleged incompetents by means of giving notice and trials by jury.

In 1842 a law was enacted providing for the establishment and maintenance of a State lunatic asylum, and provision was made for the commitment on certificate, under oaths of two physicians; and persons dissatisfied therewith were allowed three days' time in which to appeal to the Supreme Court, or some judge thereof, or to any judge of the county.

By Ch. 466 of the Laws of 1874 the insanity laws were revised. Provision was then made for the commitment to public and private asylums on the certificate of two physicians approved by the judge of the court; and the principal provisions of that act have been carried into the Act of 1896 "under which it is provided that * * * notice to the alleged insane person shall be given" unless such notice might prove injurious or dangerous, in which case the judge may dispense with notice, specifying his reasons therefor in the order. The judge is empowered to consider the certificate and the evidence, and, on demand of the insane person or relatives, to adjourn the hearing and afford them oppor-

tunity to be present and be heard. Provision is also made for appeal to the Supreme Court, which shall cause a jury to be summoned to try the issue "in the same manner as in the proceedings for the appointment of a committee."

In the opinion in the Sporza case it is stated that THE RECORDS FAIL TO DISCLOSE THE PROCEEDINGS HAD UPON THE COMMITMENT OF THE INCOMPETENT TO THE *STATE* HOSPITAL.

> "All we have is 'that the commitment was lawfully made in the manner provided by the insanity law.' We must assume that all the steps required by that statute were regularly taken, and that she was an inmate of the Manhattan *State* Hospital, duly committed according to law."
>
> "* * * Whether the incompetent in this case actually had a trial by jury and her insanity established WE ARE NOT ADVISED BY THE RECORD, for we have only the admission that she was lawfully committed in accordance with the provisions of the insanity law. This law, as we have seen, provides for a hearing upon notice, unless, for reasons stated, notice is dispensed with."

Reference was then had by the court to Trust Company of America v. State Safe Deposit Co., 187 N. Y., 178, in which it was stated:

> "Section 2323a of the Code was added to Title VI in 1895, together with another new section (2336a) to establish a scheme whereby steps might be taken at the instance of the officers hav-

ing charge of the various STATE hospitals for the insane to reimburse such institutions for their expenditures for the support of insane patients WHO HAD NO RELATIVES OR FRIENDS LIABLE OR WILLING TO CONTRIBUTE TO THEIR SUPPORT, and where the patients were the owners of property which ought to be used to defray such expenditures. In most of the cases contemplated by these sections, there would be an express adjudication of mental incompetency before the patient was committed to the institution, and, therefore, the section omits any provision for adjudication and empowers the court to appoint a committee, if satisfied of the truth of the facts required to be stated in the petition immediately and without taking any further proof.

* * * * * * * *

"As we have seen, this case is not one where the alleged incompetent has been confined by relatives in a private institution; but she has become a ward of the State, and is confined in a STATE hospital presided over by expert physicians WHO CAN HAVE NO MOTIVE FOR HER DETENTION other than that which is necessary for her benefit."

It was then pointed out that the right of trial by jury was provided by the statute; also that such right may be waived; that the proceeding for commitment was a civil one; that the RECORD SHOWED NO DEMAND HAVING BEEN MADE FOR A JURY TRIAL; and, on the record, it was *conceded* that the alleged incompetent had notice of the proceeding to appoint a committee.

WILLARD BARTLETT, J., wrote a separate opinion concurring in the conclusion reached in the majority opinion; and he said, in part:

> "My conclusion is that if Section 2323a of the Code is intended to apply to an incompetent person who has been committed to a STATE institution, without an inquisition in the usual manner, before a jury, or without a jury trial of the issue of incompetency in court, then it is unconstitutional. If, however, it may be considered as applying only to persons who have been adjudicated incompetent by the finding of a jury, and for whom no committee has as yet been appointed (by reason, for example, of no property having been discovered at the time of the inquisition), then it may be regarded as constitutional. I think it may be thus construed; *and hence, as it is not made to appear in the present case that the incompetency of Ida Sporza* had not been ascertained and declared upon an inquisition by a jury at Trial Term of the Supreme Court, it must be assumed that such was waived. Upon this assumption, the judgment below was right and must be affirmed."

It thus appears that Judge Mayer did not understand the case of Sporza v. German Savings Bank, supra, inasmuch as he cited it as a case holding that the Laws of 1896, Ch. 545, were constitutional, when, in fact, that case is a discussion of Section 2323a of Title VI of the Code of Civil Procedure—an entirely different statute. The original ex parte commitment of Mr. Chaloner in 1897 was made under said Chapter 545 of the Laws of 1896 (R., p. 11); but the 1899 proceedings were insti-

tuted and conducted under Title VI of the Code of Civil Procedure, and *not* under Section 2323a of that Title. Therefore, the Sporza case has absolutely no bearing upon the case now at the bar of this Honorable Court as an authority to sustain the wholly erroneous decision of the Circuit Court of Appeals for the Second Circuit, and the opinion of Judge Mayer.

Likewise, in Matter of Walker, 57 App. Div., 1, the court held the General Insanity Law (Ch. 545, Laws of 1896) to be constitutional, and also held Section 2323a of the Code of Civil Procedure to be constitutional; but such a holding does not support the remainder of the Title VI of the Code of Civil Procedure under which the orders in the 1899 and 1901 proceedings, attempting to appoint Prescott Hall Butler and Thomas T. Sherman, successively, were made.

Matter of Walker, 57 App. Div., 1.

SYLLABUS:

The insanity law is not unconstitutional as depriving an incompetent of liberty without "due process of law," nor is Sec. 2323-a, Code of Civil Procedure.

Sec. 2323-a, et seq., authorizing the appointment of a committee of an alleged incompetent person who has been committed to a state institution in any manner provided by law, to enable the State to secure reimbursement for his maintenance, without providing for a new investigation of his competency—its provisions are not unconstitutional in that they permit the alleged incompetent to be deprived of his liberty or property without "due process of law."

The court pointed out that the order appealed from was entered under Sections 2323-a, 2323-b and 2336-a.

Notice was served (of the proceedings for the appoint-

ment of a committee) upon the officer in charge of the institution in which the alleged incompetent was confined; upon the incompetent himself; and upon the wife.

The wife appeared by counsel; and the appellant appeared by counsel and alleged that his former or initial commitment of two years before was illegal on the ground that no notice had been served upon him.

The court, in its opinion, pointed out that the original papers in which the initial commitment proceedings had been had were not in the record on appeal; and that it would be assumed that the proceedings were regular, the constitutionality of the statute under which the commitment had been had having been upheld in a previous case—that it would be assumed that the requirements had been complied with in substance and form.

One other matter should be mentioned before this argument is closed, namely, the affidavit of Egerton L. Winthrop, Jr., dated June 22, 1899 (R. pp. 140-142), where, in asking an allowance for attorney's fees from the estate of Mr. Chaloner, he positively states that in December, 1897, his firm had been retained to represent John Armstrong Chaloner's family in proceedings for the appointment of a committee, and that, at that time, he (Winthrop) had been informed that *"the said John Armstrong 'Chanler' was contemplating proceedings for his release from Bloomingdale asylum where he had been duly committed as a person of unsound mind * * *."* This shows beyond doubt the desire and purpose of Mr. Chaloner's family to keep him in Bloomingdale; and, further, that the 1899 proceedings were instituted in furtherance of that purpose.

Respectfully submitted,

EDWARD F. COLLADAY,
SIDNEY J. DUDLEY.



CODE OF CIVIL PROCEDURE OF NEW YORK.

TITLE VI.

PROCEEDINGS FOR THE APPOINTMENT OF A COMMITTEE OF THE PERSON, AND OF THE PROPERTY OF A LUNATIC, IDIOT, OR HABITUAL DRUNKARD; GENERAL POWERS AND DUTIES OF THE COMMITTEE.

Sec. 2320. Jurisdiction; concurrent jurisdiction.
2321. Duty of court having jurisdiction.
2322. Committee may be appointed.
2323. Application for committee; by whom made.
2323a. Application when incompetent person is in a State institution; petition by whom made; contents and proceedings upon presentation thereof.
2323b. Costs of proceeding.
2324. Duty of certain officers to apply.
2325. Contents, etc., of petition; proceedings upon presentation thereof.
2325a. Notice to be filed, recorded and indexed.
2326. When foreign committee may be appointed.
2327. Order for commission, or for trial by jury in court.
2328. Contents of commission.
2329. Commissioners to be sworn; vacancies, how filled.
2330. Jury to be procured. Proceedings thereupon.
2331. Proceedings upon the hearing.
2332. Return of inquisition and commission.
2333. Expenses of commission.

2334. Proceedings upon trial by jury in court.
2335. Subject of inquiry in cases of lunacy.
2336. Proceedings upon verdict, or return of commission.
2336a. Sections of this title not applicable when application for committee is made under authority of this State.
2337. Security to be given by committee.
2338. Compensation of committee.
2339. Committee under control of court; limitation of powers.
2340. Committee of property may maintain actions, etc.
2341. Committee of property; to file inventory and account.
2342. Id; May be compelled to file the same, or render an additional account, etc.
2343. Property, when to be restored.
2344. Id; disposition in case of death.
2344a. Court may compel performance of contract made by incompetent person in certain cases.

2320. (Am'd 1895.) *Jurisdiction; concurrent jurisdiction.*

The jurisdiction of the supreme court extends to the custody of the person and the care of the property, of a person incompetent to manage himself or his affairs, in consequence of lunacy, idiocy, habitual drunkenness, or imbecility arising from old age or loss of memory and understanding, or other cause. Where a county court has jurisdiction of those matters, concurrent with that of the supreme court, the jurisdiction of the court first exercising it, as prescribed in

this title, is exclusive of that of the others, with respect to any matter within its jurisdiction, for which provision is made in this title. In all proceedings under this title for the appointment of a committee of such a person, he shall be designated "an alleged incompetent person;" and after the appointment of a committee of such person, in all subsequent proceedings the lunatic, idiot, habitual drunkard or imbecile shall be designated "an incompetent person."

L. 1895, ch. 946.

2321. *Duty of court having jurisdiction.*

The court exercising jurisdicton over the property of either of the incompetent persons, specified in the last section, must preserve his property from waste or destruction; and, out of the proceeds thereof, must provide for the payment of his debts, and for the safe keeping and maintenance and the education when required of the incompetent person and his family.

L. 1874; ch. 446, part of paragraph 1.

2322. *Committee may be appointed.*

The jurisdiction, specified in the last two sections, must be exercised by means of a committee of the person, or a committee of the property, or of a particular portion of the property, of the incompetent person, appointed as prescribed in this title. The committee of the person and the committee of the property may be the same individual, or different individuals, in the discretion of the court.

2323. (Am'd 1895.) *Application for committee; by whom.*

An application for the appointment of such a committee must be made by petition, which may be presented by any person. Except as provided in the next section, where the application is made to the supreme court, the petition must be presented at a special term held within the judicial district, or to a justice of said court within such judicial district at chambers; where the person alleged to be incompetent resides; or if he is not a resident of the State, or the place of his residence can not be ascertained, where some of his property is situated, or the State institution is situated of which he is an inmate.

L. 1895, ch. 824.

2323a. (Added, 1895; am'd 1897, 1904, 1912). *Application when incompetent person is in a state institution; petition, by whom made; contents and proceedings upon presentation thereof.*

Where an incompetent person has been committed to a state institution in any manner provided by law, and is an inmate thereof, the petition may be presented on behalf of the state by a state officer having special jurisdiction over the institution where the incompetent person is confined or the superintendent or acting superintendent of said institution; the petition must be in writing and verified by the affidavit of the petitioner or his attorney, to the effect that the matters therein stated are true to the best of his information or belief; it must show that the person for whose person or property, or both, a committee is asked has been legally committed

to a state institution over which the petitioner has special jurisdiction, or of which he is superintendent or acting superintendent, and is at the time an inmate thereof; it must also state the institution in which he is an inmate, the date of his admission, his last known place of residence, the name and residence of the husband or wife, if any, of such person, if known to the petitioner, and if there be none known to the petitioner, the name and residence of the next of kin of such person living in this state so far as known to the petitioner; the nature, extent and income of his property, so far as the same is known to the petitioner, or can with reasonable diligence be ascertained by him. The petition may be presented to the supreme court at any special term thereof, held either in the judicial district in which such incompetent person last resided, or in the district in which the state institution in which he is committed is situated, or to a justice of the Supreme Court at chambers within such judicial district, or to the county court of the county in which the incompetent person resided at the time of such commitment, or of the county in which said institution is situated. Notice of the presentation of such petition shall be personally given to such person, and also to the husband or wife, if known to the petitioner, or if none is known to the petitioner, to the next of kin named in the petition, and to the officer in charge of the institution in which such person is an inmate unless sufficient reasons for dispensing therewith are set forth in the petition or shown by affidavit. When notice is required, it may be given in any manner which the

court deems proper. Upon the presentation of such petition, and proof of the service of such notice, the court or justice may, if satisfied of the truth of the facts required to be stated in such petition, immediately appoint a committee of the person or property, or both, of such incompetent person or may require any further proof which it or he may deem necessary before making such appointment.

Added by L. 1895, ch. 824; am'd by L. 1897, ch. 149; L. 1904, ch. 509; L. 1912, ch. 98, in effect Sept. 1, 1912.

2323b. (Added 1895.) *Costs of proceeding.* Upon the presentation of a petition and the appointment of a committee, as provided in section two thousand three hundred and twenty-three (a), the court or justice may award costs of the proceeding, not exceeding twenty-five dollars in addition to necessary disbursements, to the petitioner, payable from the estate of the incompetent person, and upon denial of an application to set the same aside, costs as of a motion.

2324. *Duty of certain officers to apply.* Where the incompetent person has property, which may be endangered in consequence of his incompetency, and no relative or other person applies for the appointment of a committee of his person, the overseer or superintendent of the poor of the town, district, county, or city in which he resides, or, where there is no such officer, the officer or officers performing corresponding functions under another official title must apply to

the proper court for the appointment of such a committee. The expenses of conducting the proceedings thereupon must be audited and allowed, in the same manner as other official expenses of those officers are audited and allowed.

2 R. S., 52, 53, paragraph 2-7 (2 Edm. 53).

2325. (Am'd 1891.) *Contents, etc., of petition; proceedings upon presentation thereof.*

The petition must be in writing, and verified by the affidavit of the petitioner, or his attorney, to the effect that the matters of fact therein stated are true. It must be accompanied with proof, by affidavit, that the case is one of those specified in this title. It must set forth the names and residences of the husband or wife, if any, and of the next of kin and heirs, of the person alleged to be incompetent, as far as the same are known to the petitioner, or can, with reasonable diligence, be ascertained by him, and also the probable value of the property possessed and owned by the alleged incompetent person, and what property has been conveyed during said alleged incompetency and to whom, and its value and what consideration was paid for it, if any, or was agreed to be paid. The court must, unless sufficient reasons for dispensing therewith are set forth, in the petition or accompanying affidavit, require notice of the presentation of the petition to be given to the husband or wife, if any, or to one or more of the relatives of the person alleged to be incompetent, or to an officer specified in the last section. Where notice is required, it may be given in any manner which the court deems proper; and for that purpose, the hearing may be ad-

journed to a subsequent day, or to another term, at which the petition might have been presented.

Substituted for 2 R. S. (Part 2, c. 5, tit. 2), paragraph 2-7. Am'd by L. 1891, ch. 263.

* * * * * * * *

2327. (Am'd 1895.) *Order for commission, or for trial by jury in courts.*

Unless an order is made, as prescribed in the last section, if it presumptively appears, to the satisfaction of the court, from the petition and the proofs accompanying it, that the case is one of those specified in this title; and that a committee ought, in the exercise of a sound discretion, to be appointed; the court must make an order, directing either.

1. That a commission issue, as prescribed in the next section, to one or more fit persons, designated in the order; or

2. That the question of fact, arising upon the competency of the person, with respect to whom the petition prays for the appointment of a committee, be tried by a jury at a trial term of the court.

3. When it satisfactorily appears from the petion and accompanying affidavits that any person or persons having acquired from the alleged incompetent person, real or personal property during the time of such alleged incompetency, without adequate consideration, the court may issue an order, with or without security, restraining such person or persons from selling, assigning, disposing of or incumbering said property, or confessing judgment which shall become a lien upon said property, during the pendency of

the proceeding for the appointment of a committee, and said order may in the discretion of the court be continued for ten days after the appointment of such committee. Notice of the execution of the commission shall be given to the person or persons enjoined in such manner as the court may direct.

L. 1895, ch. 946.

2328. *Contents of commission.*

The commission must direct the commissioners to cause the sheriff of a county, specified therein, to procure a jury; and that they inquire, by the jury, into the matters set forth in the petition; and also into the value of the real and personal property of the person alleged to be incompetent, and the amount of his income. It may contain such other directions, with respect to the subjects of inquiry, or the manner of executing the commission, as the court directs to be inserted therein.

* * * * * *

2330. (Am'd 1895.) *Jury to be procured; proceedings thereupon.*

The commissioners, or a majority of them, must immediately issue a precept to the sheriff, designated in the commission, requiring him to notify, not less than twelve nor more than twenty-four indifferent persons, qualified to serve, and not exempt from serving, as trial jurors in the same court, to appear before the commissioners, at a spcified time and place, within the county, to make inquiry, as commanded by the commission. * * *

2331. *Proceedings upon the hearing.*

All the commissioners must attend and preside at the hearing; and they, or a majority of them, have, with respect to the proceedings upon the hearing, all the power and authority of a judge of the court, holding a trial term, subject to the directions contained in the commission. Either of the commissioners may administer the usual oath to the jurors. At least twelve jurors must concur in a finding. If twelve do not concur, the jurors must report their disagreement to the commissioners, who must thereupon discharge them, and issue a new precept to the sheriff, to procure another jury.

2332. *Return of inquisition and commission.*

The inquisition must be signed by the jurors concurring therein, and by the commissioners, or a majority of them, and annexed to the commission. The commission and inquisition must be returned by the commissioners, and filed with the clerk.

* * * * * *

2334. (Am'd 1895.) *Proceedings upon trial by jury in court.*

Where an order is made, directing the trial, by a jury, at a trial term, of the questions of fact, arising upon the competency of the person, with respect to whom the petition prays for the appointment of a committee, the order must state, distinctly and plainly, the questions of fact to be tried; which may be settled as where an order for a similar trial is made in an action. The court may, in that or in a subsequent order, di-

rect that notice of the trial be given to such persons, and in such a manner as is deemed proper. The trial must be reviewed in the same manner, with like effect, and, except as otherwise directed in the order, the proceedings thereupon are, in all respects, the same as where questions of fact are tried, pursuant to an order for that purpose. The court may make inquiry, by means of a reference or otherwise, as it thinks proper, with respect to any matter, not involved in the questions tried by the jury, the determination of which is necessary in the course of the proceedings. The expenses of the trial, and of such an inquiry, must be paid by the petitioner.

L. 1895, ch. 946.

2335. (Am'd 1895.) *Subject of inquiry in cases of lunacy.*

Where the petition alleges that the person, with respect to whom it prays for the appointment of a committee, is incompetent, by reason of lunacy, the inquiry with respect to his competency, upon the execution of a commission, or the trial at a trial term, as prescribed in this title, must be confined to the question, whether he is so incompetent, at the time of the inquiry; and testimony, respecting any thing said or done by him, or his demeanor or state of mind, more than two years before the hearing or trial, shall not be received as proof of lunacy, unless the court otherwise specially directs, in the order granting the commission, or directing the trial by jury.

L. 1874, ch. 446, paragraph 2, am'd; L. 1895, ch. 940.

* * * * * *

2336a. (Added, 1895.) *Sections of this title not applicable when application for committee is made under authority of this State.*

Sections two thousand three hundred and twenty-five to two thousand three hundred and thirty-six, both inclusive, of this title shall not apply to applications for the appointment of a committee made by it on behalf of the State to secure reimbursement, in whole or in part, for maintenance and support in a State institution.

* * * * * *

2338. (Am'd 1895, 1915.) *Compensation of committee.*

A committee of the property is entitled to the same compensation as an executor, administrator or testamentary trustee.

* * * * * *

2339. *Committee under control of court; limitation of powers.*

A committee, either of the person or of the property, is subject to the direction and control of the court by which he was appointed, with respect to the execution of his duties; and he may be suspended, removed, or allowed to resign, in the discretion of the court. A vacancy created by death, removal, or resignation may be filled by the court. But a committee of the property can not alien, mortgage, or otherwise dispose

of, real property, except to lease it for a term not exceeding five years, without the special direction of the court, obtained upon proceedings taken for that purpose, as prescribed in title seventh of this chapter.

* * * * * *

2341. (Am'd 1894, 1906, 1915.) Committee of property; to file inventory and account.

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Supreme Court of the United States,

OCTOBER TERM, 1916.

No. 121.

JOHN ARMSTRONG CHALONER,
Plaintiff-in-Error,

AGAINST

THOMAS T. SHERMAN,
Defendant-in-Error.

BRIEF ON BEHALF OF DEFENDANT-IN-ERROR.

Statement.

This is substantially an action of trover. The plaintiff-in-error is an adjudged incompetent, so adjudicated by the Supreme Court of the State of New York in 1899. The defendant-in-error is his committee, appointed in 1901 by the same court, as successor to the original committee. The incompetent, having escaped from custody and departed to another State, brings this action, alleging

that the order appointing the defendant-in-error as his committee is void, and that therefore the defendant in-error's acts, in taking and keeping his property and in declining to deliver it up on demand, are conversions. The relief demanded in the action, as in all actions for conversion, is not a return of the plaintiff-in-error's property to him, but a judgment for damages, which would necessarily be measured by the value of the property at the time of the alleged conversion. The action having been begun in 1904, and the alleged conversion having, of course, taken place at a still earlier date, the recovery sought has no relation to the property now in the committee's hands, and a judgment in favor of the plaintiff would vest defendant, personally, with title to the property in hand at the time of the alleged conversion, at the same time charging him with damages which would probably be much more or much less than the property's present value. The action can have no direct effect upon the very much larger amount of property which has come into the committee's hands since it was commenced.

In 1897, by an order of the Supreme Court of the State of New York dated March 10th, 1897 (fol. 222), the plaintiff-in-error was committed to Bloomingdale Asylum. In 1899, while he was in Bloomingdale, proceedings were brought by his relatives to secure an adjudication that the plaintiff-in-error was incompetent and to procure the appointment of a committee. These proceedings, the record in which was offered and received in evidence (fols. 196–207), were regularly conducted and resulted in the order already referred to adjudging the incompetency. It is not alleged, and no attempt has been made to prove, that any proceedings of any sort have ever been instituted by or for the incompetent to review, vacate, modify or supersede this order, which in fact has ever since remained and still re-

mains in full force and effect. On November 19, 1901, the original committee, appointed by the 1899 order, resigned, and by an order of the same date the defendant-in-error was appointed committee in his place.

The complaint alleges that the order appointing the defendant-in-error depended for its validity upon the order of 1899 adjudging the incompetency, and that the order adjudging the incompetency was void because "made and entered without lawful or reasonable opportunity to plaintiff to appear or to be heard" and for lack of jurisdiction. It is further alleged that the opportunity to be heard was denied plaintiff-in-error because, when the hearing was held, he was still in custody in Bloomingdale under the order of 1897 committing him thereto, which committing order was obtained by fraud and perjury and was made possible because his presence in the State, on which jurisdiction to make that order depended, was due to the fact that he had been lured thither by persons acting in the interest of his relatives.

The answer denies all these contentions and sets up in addition, as an affirmative defense, the allegation that at the time of the alleged making of the demand upon the defendant-in-error, upon which the alleged conversion is predicated, and at the time of the commencement of the action, the plaintiff-in-error was and still is actually insane and therefore incapable of performing, by attorney, either act. This affirmative defense, however, has no bearing upon the issues of the present appeal, since the verdict was directed in favor of the defendant-in-error at the close of the plaintiff-in-error's case, up to which time no evidence was or could properly have been introduced upon this issue.

At the trial of the action in the District Court the plaintiff-in-error (who did not personally appear)

sought by his counsel to introduce masses of evidence which were excluded as having no tendency to show either that the Supreme Court of the State of New York lacked jurisdiction to make the order of 1899 adjudging the incompetency and appointing the original Committee, or that the proceedings were tainted with fraud of any such character as would open the adjudication to collateral attack. Plaintiff-in-error's counsel having failed to introduce or offer evidence sufficient to show even *prima facie* either that the New York court was without jurisdiction or that its order was invalidated by fraud, the learned trial Court at the close of this case directed a verdict for the defendant-in-error.

We feel that at the outset we should suggest to the court a fact, not apparent upon the record, but which appears from adjudicated cases, which perhaps renders this entire litigation academic. Since the trial herein the plaintiff-in-error has at various times petitioned the Supreme Court of the State of New York for orders directing the defendant-in-error, as his committee, to increase the allowance made him out of his estate. The decision on one of these applications is reported *sub tit. Matter of John Armstrong Chaloner, &c.*, in the *New York Law Journal* of July 2nd, 1913. In the opinion, by Giegerich, *J.*, it is said:

> "By making this application the petitioner
> "necessarily recognized as valid and subsisting
> "the adjudication declaring him incompetent
> "and entrusting his property to the custody
> "and management of a committee."

We assume that if this matter is properly before this court, it will not permit the plaintiff-in-error at one and the same time to ask a State court to hold an adjudication valid and a Federal court to hold it void.

POINTS.

I.

The learned trial Court did not err in excluding evidence offered to show the mental condition of the plaintiff-in-error at various times.

The discussion will cover the assignments of error numbered Second and Third.

The present action is of course a collateral attack upon a judgment of the Supreme Court of the State of New York. If the order adjudging the incompetency is valid, the plaintiff must fail. He can succeed only if he shows that it was absolutely void. It is perfectly well settled that the issue decided by an adjudication of the court of one jurisdiction will not be relitigated in the court of another, and that the adjudication must be taken at its face value unless shown to have been rendered without jurisdiction or procured by extrinsic fraud. Accordingly, the question whether or not plaintiff-in-error was actually insane when so adjudged could not be litigated in this action (*Matter of Curtiss*, 137 App. Div. 584; 199 N. Y. 36). All evidence tending to prove his sanity in 1899 was therefore utterly irrelevant and properly excluded. The same reasoning holds true with added force as applied to his mental condition in 1897 and in 1901.

As to the evidence offered in regard to the mental condition of the plaintiff-in-error at the times of the alleged conversion and of the commencement of the action the situation is different, though the result is the same. In his complaint, plaintiff-in-error unnecessarily alleged his own present sanity, and the answer not only denies

this, but sets up as an affirmative defense his present and long continued insanity. These allegations of sanity in the complaint were undoubtedly included in order to anticipate and negative the expected defense based on the contention that the plaintiff-in-error as a lunatic could not by attorney make a lawful demand, and had no standing in court and could not sue. Without such an allegation the presumption of sanity would no doubt have taken care of the plaintiff-in-error until such time as proof in support of an answer setting up the defense should have been introduced. The contention is necessarily in its nature matter of affirmative defense and no part of the cause of action. If the order adjudging the plaintiff in-error incompetent was absolutely void, he has a cause of action anywhere in any court, whether or not he was actually insane when the cause of action arose or the suit was begun. Until a man is lawfully adjudicated the fact that he is of unsound mind will not cut off his right to sue or his power to act by attorney, and the adjudication attacked in the action could not be held to establish his present insanity without begging the question by assuming that the adjudication was valid. Accordingly, as a part of the plaintiff-in-error's case in chief it made no difference whether he was now, on the one hand as sane as the trial Judge himself, or, on the other hand, as mad as the traditional March hare. If and when the defendant-in-error offered evidence to show that the plaintiff-in-error was presently insane, evidence on that subject would become highly material. The rulings complained of in these assignments of error, so far as they relate to evidence of plaintiff's sanity after 1901, simply excluded matter not relevant at the time when offered, and which would become relevant only in case the defendant-in-error should offer evidence in support of his affirmative defense.

The ruling of the trial Court excluding the record of the proceeding in Virginia in 1901, which purported to adjudge that the plaintiff-in-error was sane, was correct for the same reason. This adjudication might be important evidence upon the issue of sanity if and when that issue was itself before the court, but could not be received during the plaintiff-in-error's case.

It is, we suppose, unnecessary to argue that evidence of actual sanity could not be treated as having any tendency to show fraud in the orders attacked. If the plaintiff-in-error was in fact sane when adjudged insane, proof of the fact would show that the adjudging court was wrong, but would have no tendency to show that its judgment was rooted in fraud.

The remarks in the opinion in *Chanler* v. *Sherman*, 162 Fed. 19, to the effect that the present sanity of the plaintiff-in-error is at issue in the cause, do not affect the correctness of the rulings under consideration. The question before the court in that proceeding was simply whether the plaintiff-in-error was entitled to a writ of protection to enable him safely to come to New York to try his case. To decide that question the court was obliged to consider what questions the plaintiff-in-error might have to litigate during the entire trial. One of these questions undoubtedly was that as to his sanity at the times of the alleged conversion and afterward. If the verdict had not been directed in favor of the defendant-in-error, the latter might conceivably have offered proof in support of the allegations of continued insanity, which would then have become a highly important issue. Under the circumstances that issue was not reached. The ruling of the trial Court, therefore, was not in conflict with the views expressed in that opinion.

II.

The ruling of the trial Court excluding evidence offered to show that the plaintiff-in-error, when committed to Bloomingdale, had been fraudulently lured into the State of New York for the purpose, was not erroneous.

This discussion covers the rulings complained of in the assignment of error numbered Fourth.

In the first place, as has already been stated, the learned trial court assumed for the purposes of the case that the plaintiff-in-error had been fraudulently lured (fol. 74). The actual ruling excluding the evidence of the fact assumed cannot therefore have been erroneous. The court, however, was also right in disregarding the fact assumed, and treating it as immaterial.

The alleged luring, if it took place, occurred before the 1897 proceeding and before the plaintiff came to New York in February of that year. That proceeding did not, of course, adjudge the plaintiff-in-error to be an incompetent, but merely provided tentatively for his detention, for his own and the public good. It had nothing whatever to do with the proceeding two years later by which the plaintiff-in-error was adjudged incompetent. The latter was a wholly new proceeding, begun by the issue and service of fresh process, and in it the whole question of the plaintiff-in-error's then present sanity was tried out. The tribunal was not in any sense governed by the *ex parte* order of commitment, but was free to decide the question absolutely as matter of first impression. If the

plaintiff-in-error was brought within range of the order of commitment by means of a process of fraudulent luring, that fact, however it might affect the order of commitment, cannot affect an independent adjudication made years later.

In the second place, it is not alleged that the defendant-in-error from whom damages are sought, was concerned in or privy to the luring, nor was it specifically alleged or proved, nor was there any specific offer to prove, that even the original committee was connected with the acts complained of.

Again, the evidence shows that long before the commitment proceeding was begun, any luring there may have been had spent any force it may have had. He came to New York in February, 1897 (fols. 69, 70). The petition on which he was committed was not verified till March 10th (fol. 215). If, then, he ever was lured, a period of from ten days to several weeks passed between the luring and the taking advantage of it. There was no proof, or offer to prove, that during all this time the plaintiff-in-error was not a free agent here or that any fraud was used to induce him to remain.

Moreover, even if the commitment order of 1897 was made possible by a fraudulent luring of the plaintiff-in-error into the State of New York, the jurisdiction of the court was not impaired thereby. As was pointed out by the learned trial Judge and by the Circuit Court of Appeals, the jurisdiction of the State over questions of incompetency, depends upon very different principles from those involved in questions of individual controversies. The State itself has a vital interest in the proper disposition of incompetent persons and it has the right and duty to determine the mental condition and status of every person within its boundaries at any given time. It cannot be deprived of that right or relieved of that duty by any impropriety in the act of any private individual even if the

presence of the person in question within the State be due to such improper act. To rule that a State could not confine, by commitment, a person fraudulently lured within its limits would deprive it of the power to protect its citizens against even the most obviously violent lunatic.

The decisions cited by the learned counsel holding that where the service of a summons in a suit involving an ordinary private controversy is obtained after the defendant has been fraudulently lured into the jurisdiction, the summons will be set aside, differ from the case at bar in two material particulars. In the first place, the attack in those cases is always direct, by motion in the action itself to set aside the summons, and not collateral, by an action in another jurisdiction. In the second place, in such cases the jurisdiction is invoked and conferred by law purely for private benefit, and the private controversy involves no public question. The Court is therefore fully justified in declining to give either of the parties the benefit of its assistance when its aid has been invoked by fraud. Where, however, the issue is simply whether the interests of the public and the alleged incompetent require that he be confined, the State itself has an inherent interest in the controversy, and the Court will not decline jurisdiction even if the alleged incompetent has been improperly brought within its territorial sphere. The Court cannot and will not shirk the duty which it owes the whole public of determining whether or not the person in question belongs to the class which requires supervision, merely because the presence of the alleged incompetent within its territorial jurisdiction has been brought about by a fraud upon him. He is there and must be dealt with. No authority yet cited to support the plaintiff-in-error's contention has held that such an adjudication can be attacked collaterally on any such ground,

III.

The learned trial Court did not err in excluding evidence as to the residence of the plaintiff in 1897 and 1899.

This discussion covers the assignments of error numbered Fifth and Sixth.

The rulings excluding evidence of this character were correct, because the Supreme Court of New York had jurisdiction both in the commitment proceeding and in the proceedings for the appointment of a committee, whether the plaintiff-in-error was a resident of this State or not, so long as he was within the State when the proceedings were begun, and had property here.

Emmerich v. *Thorley*, 35 App. Div. 452.
Matter of Pettit, 2 Paige Chancery, 174.
Matter of Ganse, 9 Paige Chancery, 416.
Matter of Perkins, 2 Johnson's Chancery, 124.
Matter of Neally, 26 How. Pr. 402.

Moreover, the learned trial Judge, in directing the verdict, expressly assumed (fol. 120) that the plaintiff-in-error resided in Virginia. The exclusion of this evidence must, therefore, have been harmless to the plaintiff-in-error.

Finally, the fact that the plaintiff was a resident of New York was one of the facts at issue and adjudged in the 1899 proceedings. The question of his residence was for the New York court to determine, and its decision is final (*Kinnier* v. *Kinnier*, 45 N. Y. 535).

IV.

The learned trial Court did not err in excluding any of the evidence offered to show fraud in the various proceedings resulting in the order of commitment of 1897 and the adjudication of incompetency of 1899.

This discussion appears to cover the assignment of error numbered Seventh.

An examination of the offers of evidence made by the plaintiff-in-error, the questions asked and excluded, and, indeed, of the excluded evidence itself as it appears in the depositions which were marked for identification, will show that the alleged fraud complained of consisted in the giving of testimony, alleged to be false, in the affidavits upon which the commitment of 1897 was had, and in the evidence upon which the plaintiff was adjudged incompetent in 1899. The alleged conspiracy appears to have been a conspiracy of the relatives of the plaintiff-in-error to deceive the Court by such perjury into deciding as it did decide. Such fraud, however, if proved, is no basis for a collateral attack upon an adjudication. The question whether the testimony, given in support of one side of the case, is or is not true is one of the questions necessarily adjudged in every litigation. In the case at bar the question whether the alleged perjurious testimony was true was necessarily adjudged by the Supreme Court of the State of New York in finding the plaintiff-in-error incompetent. This Court could not determine whether or not the testimony in question was perjured without trying over again the very same issue which the New York Supreme

Court decided when it made the orders complained of. In accordance with these principles it is well settled that the fact that a judgment is procured by false testimony does not open it to collateral attack.

Hilton v. *Guyott*, 42 Fed. 249.
U. S. v. *Throckmorton*, 98 U. S. 61.

These cases show that the fraud which will invalidate a judgment or open it to collateral attack must be extrinsic, or of such a character as prevents the party defrauded from presenting his case or some essential element of it to the Court. None of the offers to prove, in the case at bar, suggest that any fraud of this character was practiced upon the plaintiff-in-error. The contention that the plaintiff-in-error was fraudulently lured into the State of New York in 1897 is not of this character. Such fraud, even if it resulted in the commitment of the plaintiff-in-error to an asylum, did not deprive him of the power, which in fact he had in this instance, if he had chosen to exercise it, of presenting every essential of his case to the court which adjudged him incompetent. As was pointed out by the Supreme Court of the United States in *Simon* v. *Craft*, 182 U. S. 427, even one who is forcibly prohibited from appearing in person upon the hearing may well be perfectly free to conduct his defense in such proceedings with entire efficiency; and in the absence of allegation, proof, or offer to prove, that he was interfered with, the Court will presume that he was not.

V.

The learned trial and appellate courts did not err in holding that there was neither proof nor offer of competent proof that the plaintiff-in-error, in the lunacy proceedings of 1899, was denied either notice or opportunity to be heard.

This contention is set up in the Ninth, Eleventh and Twelfth assignments of error.

It has not been and indeed cannot be seriously contended that notice of the proceedings for the appointment of a committee was not personally served upon the plaintiff-in-error in the ordinary manner. The argument is, however, that notice is insufficient to confer jurisdiction unless it be such as will afford the recipient an opportunity to defend, that the notice in this case was vitiated because when he received it the plaintiff-in-error was confined in Bloomingdale, and was physically unable to attend the trial, and that he was thus denied his opportunity to be heard. As above noted, however, it has been expressly decided by the Supreme Court of the United States, that a notice otherwise duly served in such proceeding is not vitiated, and opportunity to be heard is not denied, by the mere fact that the alleged incompetent is restrained from attending the trial (*Simon* v. *Craft*, *supra;* see also Woerner on American Law of Guardianship, p. 401). These authorities demonstrate that the mere fact of detention in an asylum upon commitment, at the time notice is served and the proceedings had, is not in itself sufficient to show that the notice did not give the alleged

lunatic opportunity to be heard. They show that in the absence of evidence the Court will presume that opportunity to defend was afforded.

Accordingly, to show that the Supreme Court in the 1899 proceeding had no jurisdiction, the plaintiff-in-error would have been obliged to prove that opportunity to be heard was denied him otherwise than by his mere enforced residence in Bloomingdale. There was, however, no offer to prove that anything was done or threatened by any one to prevent him from attending the hearing or being represented there. The only offer of proof on this score was the offer to prove the plaintiff-in-error's physical disability at the time. This is by no means sufficient. If the physical disability to attend a trial vitiates notice, how many of the judgments rendered by the courts in ordinary civil cases would be open to collateral attack? If in any true sense an alleged lunatic who is ill and physically unable to appear when the case is called for trial is denied opportunity to be heard when the court tried the case without him, every other litigant who is in the same unfortunate predicament is equally denied opportunity to be heard. No one, however, has as yet had the temerity to advance this proposition. The plain fact is, of course, that one who is physically unable to attend a trial is by no means denied an opportunity to be heard, if he is able to retain and consult freely with counsel. The fact that the plaintiff-in-error in this case was entirely at liberty to retain and consult with counsel appears not only from the fact that he wrote long and full letters to at least one of his counsel (fol. 112, Letter printed as Exhibit 6 for Identification, fol. 303), but also from the testimony in the 1899 proceeding (fol. 232) which shows that at the time in question he was on parole and at liberty to go where he pleased within large limits (fol. 231),

Furthermore, even if it were true that the "opportunity to be heard", to which a person is entitled in such cases, is an opportunity to attend in person, it is nevertheless plain that that opportunity is not denied a party who finds himself physically unable to attend, unless on discovering the situation, he asks for and is refused an adjournment. One who knows that his trial is coming off at a time when he cannot attend, and nevertheless lets things proceed without even asking a postponement, is in no position to complain. There is no suggestion in the case at bar that the plaintiff even suggested a wish to be present or to have the trial at a later day. On the contrary, it appears from the testimony in the 1899 record that he could have attended if he had wished to do so, but deliberately and of his own preference refused to attend (fols. 225, 232). The utmost extent to which the offer of proof went was to proffer evidence to show that the conditions imposed upon the plaintiff-in-error by his confinement and illness may have made the conduct of his defense inconvenient. That is by no means sufficient. The Court of Appeals of New York has held in *Happy* v. *Mosher*, 48 N. Y. 313, that a sufficient opportunity to be heard was afforded by proceedings under a statute which made the giving of an expensive bond a prerequisite to the right to defend. In deciding this case the Court said that opportunity to defend is not denied, though made "difficult, so long as it is not impracticable". And in *Matter of Fox*, 138 App. Div. 43, it was held that interference, after due service, whereby a relative prevented the incompetent's attorney from acting, and thus impaired his opportunity to defend, did not deprive the court of the jurisdiction obtained by the service, but merely rendered the order irregular and reversible.

Moreover, as regards this subject, this court is

not in the usual position of appellate courts when considering exclusion of evidence. Ordinarily it has to be presumed that the excluded evidence would have shown all that the offer stated. Here, however, the excluded evidence is available, if the court chooses to examine it, as it apparently consisted wholly in depositions covered by a stipulation (p. 154). From the plaintiff-in-error's own testimony in his colossal deposition, it abundantly appears that he absented himself from the 1899 hearing by his own choice, being free to attend and to consult counsel (Plaintiff's deposition, Vol. V, pp. 122–142); and that he never asked—indeed, deliberately refrained from asking—that the proceedings be adjourned (Plaintiff's deposition, Vol. V, pp. 620, 622). The passages referred to seem to us so conclusive that no amount of evidence to the contrary could convince the Court that the plaintiff-in-error's failure to appear at the 1899 hearing was because opportunity to be heard was denied him. It is to be remembered that the plaintiff is himself a lawyer, to whom, if sane, the importance of the 1899 proceeding should have been evident.

VI.

The plaintiff-in-error was not denied due process of law in the proceedings of 1899, which resulted in the adjudication of his insanity. Notice was required by law, and notice was given as required.

The contention at the trial was that although the plaintiff-in-error had notice of every stage of the 1899 proceedings, such notice was insufficient, be-

cause not required by statute. The notice was, however, under the circumstances of this case, required by law.

Matter of Blewitt, 131 N. Y. 541.
Matter of Fox, supra.

These decisions establish that under the law of the State of New York, irrespective of statute, proceedings for the appointment of a committee for an alleged incompetent are valid only when based on notice to the incompetent, save in exceptional circumstances. The requirement was not included in the particular section (§ 2325) of the New York Code of Civil Procedure (1899) dealing with the subject, but the power which the Court exercises over lunatics is mainly inherent and not derived from the Code. The Code regulates it in certain, but not in all, particulars. In particulars not so regulated, proceedings in lunacy are governed by the rules which governed the exercise of jurisdiction in the premises by the courts of chancery existing before the Code was enacted. Those rules required (except under circumstances not present in the case at bar) that notice of the execution of the commission be given to the alleged incompetent.

Gridley v. *The College of St. Francis Xavier*, 137 N. Y. 327.
Matter of Andrews, 192 N. Y. 514.

It is, of course, elementary, that this Court will not review the ruling of the highest court of the State as to what the law of the State is. The argument of counsel for the plaintiff-in-error to the effect that the provisions of the Code ought to be held to exclude all other legal requirements and to comprise the whole existing New York law as to what notice is necessary, is, therefore, unavailable in this tribunal. The argument that Code Section 2323 (*a*), which specifically deals with notice to the

incompetent in one class of cases, having been passed in 1895, years after the decision in *Matter of Blewitt*, was meant to supply the omission noted in that case by stating all the requirements which the Legislature then meant to impose, is met by the decision in *Matter of Fox*, decided in 1910, which reasserts the rule of the *Blewitt* case. Moreover, when the court of last resort has held that the settled law of the State requires notice, despite the omission of any requirement on the subject in the Code, a subsequent statute cannot be construed to repeal and alter that settled law by mere implication, and especially not by an inference drawn from mere continued omission. Rather should the inference be that the later statute omitted the subject because it was already governed by the existing body of law. In any case the construction contended for could not be adopted without violating the principle requiring construction *ut res magis valeat quam pereat*. In this connection it may not be improper to call the attention of the Court to the enormous mass of property rights which depends upon the validity of New York proceedings for the appointment of committees for incompetents. A holding at this date that such proceedings are invalid because notice, though held necessary by the courts, is not required by statute, would produce a perfect chaos in titles throughout the State.

The fact that the requirement of notice is not shown by these decisions to be without exception cannot affect the issue under discussion. The record plainly shows that in 1899 the plaintiff-in-error's was not one of those unusual cases of "furious mania", nor yet of total dementia, in which notice would be either injurious or futile. He was therefore clearly within the class entitled to notice; and he cannot complain that by an exception to the non-statutory rule (if, indeed, when the precise case arises, the courts determine that there is such an exception)

some other class of persons may not be entitled to notice. Moreover, it is unnecessary that the law should require notice in all cases. Just as the State must retain the right to protect itself and its citizens by allowing in proper cases the commencement without notice of summary commitment proceedings to restrain the persons of apparent incompetents, so it must retain a like power over their property. The courts must and do recognize the existence of conditions of mental derangement in which notice is useless or even dangerous. To require notice absolutely in all cases would prevent the State from exercising its power in such cases to save the incompetent's property, and protect others from its misuse, or else would compel the State to require the doing of a vain or injurious act. It is respectfully submitted that due process of law demands no such insensate and inflexible rule. The constitutional requirement is satisfied if the law of the State requires, as does that of New York, notice to every person against whom lunacy proceedings may be brought except persons who would be injured or could not profit by it.

In addition to the general legal requirement of notice established by the decision cited, the notice in the case at bar was also required by law in another sense. The portion of the Code which applies to the proceeding (§ 2328) provides that the commission "may contain such other directions with respect to the matter of executing the commission as the Court directs to be inserted therein". The order for the commission directed that previous notice of time and place of execution of the commission be given to the plaintiff-in-error. It follows that the notice served upon the plaintiff-in-error was not a mere voluntary notification, but was a proceeding required by law.

VII.

The commitment proceedings of 1897, under which the plaintiff-in-error was confined in Bloomingdale, were not lacking in due process of law, and his commitment was lawful, although he was committed without notice.

The proceeding was in full and exact accordance with the Insanity Law of the State of New York, which permits a commitment without notice, when notice is dispensed with by the Judge for sufficient reasons stated, and this law has repeatedly been held constitutional.

Matter of Walker, 57 App. Div. 1.
Parker v. *Willard State Hospital*, 50 App. Div. 622.
Sporza v. *German Savings Bank*, 192 N. Y. 8.
Brayman v. *Grant*, 130 App. Div. 272.
Matter of Andrews, 126 App. Div. 794.

See also
People ex rel. Peabody v. *Chanler*, 133 App. Div. 159. (affd. 196 N. Y. 525).
Matter of Dowdell, 169 Mass. 387.

These authorities demonstrate that the requirement of notice as an essential element of due process has never been extended to proceedings for the temporary restraint of persons alleged to be of unsound mind, except to the extent provided for by our statute.

The case of *People ex rel. Sullivan* v. *Wendel*, 33 Misc. 496, cited by the plaintiff-in-error, is a casual and ill-considered *nisi prius* decision by a

judge whose opinion carries little weight. Moreover, the proceeding which it condemns, as denying due process, was one wholly unlike that in the case at bar, in that it failed to conform to Section 62 of the Insanity Law. That section requires either notice or an order dispensing with notice, and in that case there was neither. The other decision relied on by the plaintiff-in-error, *People ex rel. Ordway* v. *St. Saviours*, 34 App. Div. 363, relates to and condemns a totally different statute governing the restraint, not of lunatics, but of inebriates. The commitment complained of, instead of being tentative and temporary as are those under Section 62 of the Insanity Law (see the opinions of Bartlett, *J.*, in the *Sporza* case, *supra*, and of Rich, *J.*, in *People ex rel. Peabody* v. *Chanler*, *supra*), was final for a period of one year. Both these decisions were published before any of the New York authorities cited above (except the Parker case) and several of the latter were decided by the same Court.

But even if the commitment proceedings of 1897 were wholly void, that would not affect the issue here, which is solely as to the validity of the adjudication of insanity of 1899. The two proceedings were absolutely separate and distinct. They had a totally different purpose, tended to a wholly different result, and were based on different statutes. Under the procedure outlined by the New York Code of Civil Procedure (1899) (§§ 2323 *et seq.*), the adjudication may be had whether or not there has been a previous commitment, valid or invalid, under the Insanity Law. The prior commitment did not relieve the parties from a single requirement of the Code procedure, or serve as substitute for any part of the necessary proof, which, to establish the insanity in 1899, had to be given and was given independently.

It is contended by counsel for the plaintiff-in-error that the *Sporza* and *Walker* cases do not, as we

assert, sustain the constitutionality of § 62 of the Insanity Law under which the commitment took place, but only that of § 2323 (*a*) of the Code, which governs cases of persons who have previously been committed to State institutions, and that as the plaintiff in-error had not been committed to a State institution, the authorities are inapplicable to this case. But before a court can determine whether § 2323 (*a*) applies to any case, it must first ascertain whether the person under consideration has in fact been committed—that is, lawfully committed—to a State institution. In both the *Sporza* and *Walker* cases the contention was that the commitment under which the alleged incompetent was held in the State institution was void because § 62 of the Insanity Law, under which the commitment proceedings were had, was unconstitutional for lack of any requirement of notice. In each case the court had to pass on this question before it could find that Code § 2323 (*a*) applied so as to require consideration. The discussion in the opinions is therefore by no means obiter.

VIII.

No notice of the application for the defendant-in-error's appointment in 1901 in place of Prescott Hall Butler, the original committee, was given to the plaintiff-in-error, but none was required.

There is no statutory requirement of notice in such a proceeding, which is, of course, a mere substitution by the Court of one person for another as its officer—a mere filling of a vacancy caused by resignation. This it may always do at its discretion, except in so far as notice is required to persons other

than the incompetent who may have an interest in the estate.

Matter of Griffin, 5 Abb. Pract. (N. S.) 96.
Matter of Osborn, 74 App. Div. 113.

The change does not affect the substantial rights of the incompetent. If any one is entitled to notice of such a change, it is not the incompetent who, as an adjudged incompetent, must be deemed incapable of receiving or acting upon such notice.

In any event, failure to give notice of such change in no manner impairs or vitiates the jurisdiction of the court, but is a mere irregularity.

Matter of Andrews, 192 N. Y. 514.

IX.

The proceeding for the appointment of a committee was properly brought in New York County.

Section 2323 of the New York Code of Civil Procedure (1899) provides that for a resident the proceedings must be brought in the county of his residence, while for a non-resident it may be brought in any county where any of his property is situated. If the plaintiff-in-error was a resident of New York at all, he was a resident of New York County, and the proceeding was properly brought there. If he was not a resident of New York, then it was properly brought in New York County where he had real property. In any event the bringing in the wrong county would be a mere irregularity.

Matter of Porter, 34 App. Div. 147.

X.

The judgment appealed from should be affirmed.

Respectfully submitted,

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Office Supreme Court, U. S.
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IN THE
Supreme Court of the United States

OCTOBER TERM, 1916.

No. 121.

JOHN ARMSTRONG CHALONER, *Plaintiff in Error,*

against

THOMAS T. SHERMAN, *Defendant in Error.*

APPENDIX TO ARGUMENT OF COUNSEL FOR PLAINTIFF-IN-ERROR.

CODE OF CIVIL PROCEDURE OF NEW YORK.

TITLE VI.

PROCEEDINGS FOR THE APPOINTMENT OF A COMMITTEE OF THE PERSON, AND OF THE PROPERTY OF A LUNATIC, IDIOT, OR HABITUAL DRUNKARD; GENERAL POWERS AND DUTIES OF THE COMMITTEE.

Sec. 2320. Jurisdiction; concurrent jurisdiction.
2321. Duty of court having jurisdiction.
2322. Committee may be appointed.
2323. Application for committee; by whom made.
2323a. Application when incompetent person is in a State institution; petition by whom made; contents and proceedings upon presentation thereof.
2323b. Costs of proceeding.
2324. Duty of certain officers to apply.
2325. Contents, etc., of petition; proceedings upon presentation thereof.
2325a. Notice to be filed, recorded and indexed.
2326. When foreign committee may be appointed.
2327. Order for commission, or for trial by jury in court.
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2329. Commissioners to be sworn; vacancies, how filled.
2330. Jury to be procured. Proceedings thereupon.
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2334. Proceedings upon trial by jury in court.
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2336a. Sections of this title not applicable when application for committee is made under authority of this State.
2337. Security to be given by committee.
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2339. Committee under control of court; limitation of powers.
2340. Committee of property may maintain actions, etc.
2341. Committee of property; to file inventory and account.
2342. Id; May be compelled to file the same, or render an additional account, etc.
2343. Property, when to be restored.
2344. Id; disposition in case of death.
2344a. Court may compel performance of contract made by incompetent person in certain cases.

2320. (Am'd 1895.) *Jurisdiction; concurrent jurisdiction.*

The jurisdiction of the supreme court extends to the custody of the person and the care of the property, of a person incompetent to manage himself or his affairs, in consequence of lunacy, idiocy, habitual drunkenness, or imbecility arising from old age or loss of memory and understanding, or other cause. Where a county court has jurisdiction of those matters, concurrent with that of the supreme court, the jurisdiction of the court first exercising it, as prescribed in

this title, is exclusive of that of the others, with respect to any matter within its jurisdiction, for which provision is made in this title. In all proceedings under this title for the appointment of a committee of such a person, he shall be designated "an alleged incompetent person;" and after the appointment of a committee of such person, in all subsequent proceedings the lunatic, idiot, habitual drunkard or imbecile shall be designated "an incompetent person."

L. 1895, ch. 946.

2321. *Duty of court having jurisdiction.*

The court exercising jurisdicton over the property of either of the incompetent persons, specified in the last section, must preserve his property from waste or destruction; and, out of the proceeds thereof, must provide for the payment of his debts, and for the safe keeping and maintenance and the education when required of the incompetent person and his family.

L. 1874; ch. 446, part of paragraph 1.

2322. *Committee may be appointed.*

The jurisdiction, specified in the last two sections, must be exercised by means of a committee of the person, or a committee of the property, or of a particular portion of the property, of the incompetent person, appointed as prescribed in this title. The committee of the person and the committee of the property may be the same individual, or different individuals, in the discretion of the court.

2323. (Am'd 1895.) *Application for committee; by whom.*

An application for the appointment of such a committee must be made by petition, which may be presented by any person. Except as provided in the next section, where the application is made to the supreme court, the petition must be presented at a special term held within the judicial district, or to a justice of said court within such judicial district at chambers; where the person alleged to be incompetent resides; or if he is not a resident of the State, or the place of his residence can not be ascertained, where some of his property is situated, or the State institution is situated of which he is an inmate.

L. 1895, ch. 824.

2323a. (Added, 1895; am'd 1897, 1904, 1912). *Application when incompetent person is in a state institution; petition, by whom made; contents and proceedings upon presentation thereof.*

Where an incompetent person has been committed to a state institution in any manner provided by law, and is an inmate thereof, the petition may be presented on behalf of the state by a state officer having special jurisdiction over the institution where the incompetent person is confined or the superintendent or acting superintendent of said institution; the petition must be in writing and verified by the affidavit of the petitioner or his attorney, to the effect that the matters therein stated are true to the best of his information or belief; it must show that the person for whose person or property, or both, a committee is asked has been legally committed

to a state institution over which the petitioner has special jurisdiction, or of which he is superintendent or acting superintendent, and is at the time an inmate thereof; it must also state the institution in which he is an inmate, the date of his admission, his last known place of residence, the name and residence of the husband or wife, if any, of such person, if known to the petitioner, and if there be none known to the petitioner, the name and residence of the next of kin of such person living in this state so far as known to the petitioner; the nature, extent and income of his property, so far as the same is known to the petitioner, or can with reasonable diligence be ascertained by him. The petition may be presented to the supreme court at any special term thereof, held either in the judicial district in which such incompetent person last resided, or in the district in which the state institution in which he is committed is situated, or to a justice of the Supreme Court at chambers within such judicial district, or to the county court of the county in which the incompetent person resided at the time of such commitment, or of the county in which said institution is situated. Notice of the presentation of such petition shall be personally given to such person, and also to the husband or wife, if known to the petitioner, or if none is known to the petitioner, to the next of kin named in the petition, and to the officer in charge of the institution in which such person is an inmate unless sufficient reasons for dispensing therewith are set forth in the petition or shown by affidavit. When notice is required, it may be given in any manner which the

court deems proper. Upon the presentation of such petition, and proof of the service of such notice, the court or justice may, if satisfied of the truth of the facts required to be stated in such petition, immediately appoint a committee of the person or property, or both, of such incompetent person or may require any further proof which it or he may deem necessary before making such appointment.

Added by L. 1895, ch. 824; am'd by L. 1897, ch. 149; L. 1904, ch. 509; L. 1912, ch. 98, in effect Sept. 1, 1912.

2323b. (Added 1895.) *Costs of proceeding.*

Upon the presentation of a petition and the appointment of a committee, as provided in section two thousand three hundred and twenty-three (a), the court or justice may award costs of the proceeding, not exceeding twenty-five dollars in addition to necessary disbursements, to the petitioner, payable from the estate of the incompetent person, and upon denial of an application to set the same aside, costs as of a motion.

2324. *Duty of certain officers to apply.*

Where the incompetent person has property, which may be endangered in consequence of his incompetency, and no relative or other person applies for the appointment of a committee of his person, the overseer or superintendent of the poor of the town, district, county, or city in which he resides, or, where there is no such officer, the officer or officers performing corresponding functions under another official title must apply to

the proper court for the appointment of such a committee. The expenses of conducting the proceedings thereupon must be audited and allowed, in the same manner as other official expenses of those officers are audited and allowed.

2 R. S., 52, 53, paragraph 2-7 (2 Edm. 53).

2325. (Am'd 1891.) *Contents, etc., of petition; proceedings upon presentation thereof.*

The petition must be in writing, and verified by the affidavit of the petitioner, or his attorney, to the effect that the matters of fact therein stated are true. It must be accompanied with proof, by affidavit, that the case is one of those specified in this title. It must set forth the names and residences of the husband or wife, if any, and of the next of kin and heirs, of the person alleged to be incompetent, as far as the same are known to the petitioner, or can, with reasonable diligence, be ascertained by him, and also the probable value of the property possessed and owned by the alleged incompetent person, and what property has been conveyed during said alleged incompetency and to whom, and its value and what consideration was paid for it, if any, or was agreed to be paid. The court must, unless sufficient reasons for dispensing therewith are set forth, in the petition or accompanying affidavit, require notice of the presentation of the petition to be given to the husband or wife, if any, or to one or more of the relatives of the person alleged to be incompetent, or to an officer specified in the last section. Where notice is required, it may be given in any manner which the court deems proper; and for that purpose, the hearing may be ad-

journed to a subsequent day, or to another term, at which the petition might have been presented.

Substituted for 2 R. S. (Part 2, c. 5, tit. 2), paragraph 2-7. Am'd by L. 1891, ch. 263.

* * * * * * * *

2327. (Am'd 1895.) *Order for commission, or for trial by jury in courts.*

Unless an order is made, as prescribed in the last section, if it presumptively appears, to the satisfaction of the court, from the petition and the proofs accompanying it, that the case is one of those specified in this title; and that a committee ought, in the exercise of a sound discretion, to be appointed; the court must make an order, directing either.

1. That a commission issue, as prescribed in the next section, to one or more fit persons, designated in the order; or

2. That the question of fact, arising upon the competency of the person, with respect to whom the petition prays for the appointment of a committee, be tried by a jury at a trial term of the court.

3. When it satisfactorily appears from the petion and accompanying affidavits that any person or persons having acquired from the alleged incompetent person, real or personal property during the time of such alleged incompetency, without adequate consideration, the court may issue an order, with or without security, restraining such person or persons from selling, assigning, disposing of or incumbering said property, or confessing judgment which shall become a lien upon said property, during the pendency of

the proceeding for the appointment of a committee, and said order may in the discretion of the court be continued for ten days after the appointment of such committee. Notice of the execution of the commission shall be given to the person or persons enjoined in such manner as the court may direct.

L. 1895, ch. 946.

2328. *Contents of commission.*

The commission must direct the commissioners to cause the sheriff of a county, specified therein, to procure a jury; and that they inquire, by the jury, into the matters set forth in the petition; and also into the value of the real and personal property of the person alleged to be incompetent, and the amount of his income. It may contain such other directions, with respect to the subjects of inquiry, or the manner of executing the commission, as the court directs to be inserted therein.

* * * * * *

2330. (Am'd 1895.) *Jury to be procured; proceedings thereupon.*

The commissioners, or a majority of them, must immediately issue a precept to the sheriff, designated in the commission, requiring him to notify, not less than twelve nor more than twenty-four indifferent persons, qualified to serve, and not exempt from serving, as trial jurors in the same court, to appear before the commissioners, at a spcified time and place, within the county, to make inquiry, as commanded by the commission. * * *

2331. *Proceedings upon the hearing.*

All the commissioners must attend and preside at the hearing; and they, or a majority of them, have, with respect to the proceedings upon the hearing, all the power and authority of a judge of the court, holding a trial term, subject to the directions contained in the commission. Either of the commissioners may administer the usual oath to the jurors. At least twelve jurors must concur in a finding. If twelve do not concur, the jurors must report their disagreement to the commissioners, who must thereupon discharge them, and issue a new precept to the sheriff, to procure another jury.

2332. *Return of inquisition and commission.*

The inquisition must be signed by the jurors concurring therein, and by the commissioners, or a majority of them, and annexed to the commission. The commission and inquisition must be returned by the commissioners, and filed with the clerk.

* * * * * *

2334. (Am'd 1895.) *Proceedings upon trial by jury in court.*

Where an order is made, directing the trial, by a jury, at a trial term, of the questions of fact, arising upon the competency of the person, with respect to whom the petition prays for the appointment of a committee, the order must state, distinctly and plainly, the questions of fact to be tried; which may be settled as where an order for a similar trial is made in an action. The court may, in that or in a subsequent order, di-

rect that notice of the trial be given to such persons, and in such a manner as is deemed proper. The trial must be reviewed in the same manner, with like effect, and, except as otherwise directed in the order, the proceedings thereupon are, in all respects, the same as where questions of fact are tried, pursuant to an order for that purpose. The court may make inquiry, by means of a reference or otherwise, as it thinks proper, with respect to any matter, not involved in the questions tried by the jury, the determination of which is necessary in the course of the proceedings. The expenses of the trial, and of such an inquiry, must be paid by the petitioner.

L. 1895, ch. 946.

2335. (Am'd 1895.) *Subject of inquiry in cases of lunacy.*

Where the petition alleges that the person, with respect to whom it prays for the appointment of a committee, is incompetent, by reason of lunacy, the inquiry with respect to his competency, upon the execution of a commission, or the trial at a trial term, as prescribed in this title, must be confined to the question, whether he is so incompetent, at the time of the inquiry; and testimony, respecting any thing said or done by him, or his demeanor or state of mind, more than two years before the hearing or trial, shall not be received as proof of lunacy, unless the court otherwise specially directs, in the order granting the commission, or directing the trial by jury.

L. 1874, ch. 446, paragraph 2, am'd; L. 1895, ch. 946.

* * * * * *

2336a. (Added, 1895.) *Sections of this title not applicable when application for committee is made under authority of this State.*

Sections two thousand three hundred and twenty-five to two thousand three hundred and thirty-six, both inclusive, of this title shall not apply to applications for the appointment of a committee made by it on behalf of the State to secure reimbursement, in whole or in part, for maintenance and support in a State institution.

* * * * * *

2338. (Am'd 1895, 1915.) *Compensation of committee.*

A committee of the property is entitled to the same compensation as an executor, administrator or testamentary trustee.

* * * * * *

2339. *Committee under control of court; limitation of powers.*

A committee, either of the person or of the property, is subject to the direction and control of the court by which he was appointed, with respect to the execution of his duties; and he may be suspended, removed, or allowed to resign, in the discretion of the court. A vacancy created by death, removal, or resignation may be filled by the court. But a committee of the property can not alien, mortgage, or otherwise dispose

of, real property, except to lease it for a term not exceeding five years, without the special direction of the court, obtained upon proceedings taken for that purpose, as prescribed in title seventh of this chapter.

* * * * * *

2341. (Am'd 1894, 1906, 1915.) Committee of property; to file inventory and account.

2342. (Am'd 1895, 1899, 1914, 1916.) Idem; may be compelled to file the same, or render an additional account, et cetera.

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In the Supreme Court of the United States

OCTOBER TERM, 1918

No. 121

JOHN ARMSTRONG CHALONER, Plaintiff-in-Error,

against

THOMAS T. SHERMAN, Defendant-in-Error.

BRIEF OF PLAINTIFF-IN-ERROR.

JOHN ARMSTRONG CHALONER, *pro se.*

INTRODUCTION TO APPEAL BRIEF AND ARGUMENT.

STATEMENT.

This action was brought by the plaintiff against the defendant on the 5th day of April, 1904. The trial was held before Hon. George C. Holt, District Judge, and a jury in the United States District Court for the Southern District of New York on the 19th, 20th, 21st and 23d days of February, 1912. At the close of the plaintiff's case, the Trial Court directed a verdict in favor of the defendant. In rendering a decision in favor of the defendant and against the plaintiff, the Court rendered

an opinion orally which is fully set forth in the record. Thereafter and on the 6th day of March, 1912, judgment was entered in the said Court in favor of the defendant and against the plaintiff upon the issues in this action.

Thereafter, by order of the said District Court, a writ of error was issued and allowed to the plaintiff to have reviewed in the United States Circuit Court of Appeals, for the Second Circuit, the said judgment heretofore entered on the 6th day of March, 1912. A writ of error and citation was thereupon duly issued to the plaintiff-in-error who duly served his assignment of errors upon the defendant in this action.

The testimony upon the trial of this case is greatly abbreviated because of the limitations placed upon the plaintiff's counsel by the rulings of the learned Court. Before these limitations were defined by the Court, however, certain evidence was introduced by the plaintiff. The demand made by the plaintiff on the defendant for the property which is the subject matter of this suit was duly proved and received in evidence and marked Plaintiff's "Exhibit 1." It was conceded that there was no delivery under this demand.

The plaintiff's sworn statement before the Tax Commissioner of the City of New York, made by him on April 28th, 1896, was next received in evidence to show that the plaintiff's residence at that date was Cobham, Va.

The testimony of plaintiff's former wife, which was taken by a deposition, was then offered to prove the plaintiff's residence prior to his commitment under the alleged fraudulent proceedings in New York, which we contend upon the admitted perjury of Winthrop Astor Chanler, Chief Petitioner in the 1897 proceedings, were fraudulent; also the plaintiff's condition of health. The condition of the plaintiff's health was excluded by the Court.

A certified copy of the 1897 lunacy proceedings, under which the plaintiff-in-error was confined, was then excluded by the Court, with exception to the plaintiff. All evidence attacking the validity of the contents of the 1897 and 1899 proceedings was excluded by the Court, with exception to the plaintiff. The next evidence in the record attacks the jurisdiction of the Court in the 1899 proceedings. Evidence was introduced by the plaintiff showing that the Commissioners in the 1899 lunacy proceedings were not sworn at the time that a notice instituting same was issued by said Commissioners.

Pedro N. Piedra, the next witness, testified that he was a nurse employed at the Bloomingdale Asylum (falsely so called, its true name being "The Society of the New York Hospital," with hospital and offices in 15th Street, just west of Fifth Avenue, New York), in Westchester County, N. Y., by Dr. Lyon, its superintendent, in 1899. He was engaged in taking care of Mr. John Armstrong Chaloner, the plaintiff in this case. He was daily with Mr. Chaloner from eight a. m. to eight p. m., during the months of May and June, 1899. (Transcript of Record, pp. 30-33, fols. 56-63.)

The Court thereupon excluded all testimony relating to the physical or mental condition of John Armstrong Chaloner, the plaintiff herein, at the very time that the 1899 proceedings were being held in New York County without the attendance of the said John Armstrong Chaloner, named in said proceedings as the alleged incompetent person. The Court refused to permit an examination of this witness in any way about the physical or mental condition of the plaintiff-in-error in May, 1899. *The plaintiff's counsel offered to prove that these proceedings were fraudulent and that the alleged incompetent person was perfectly sane at that time.* The offer

was also made to show by conversations with the physicians who testified at said proceedings that on or about that very day they had admitted to the witness that said John Armstrong Chaloner was perfectly sane.

The plaintiff's counsel next offered in evidence an exemplified copy of certain proceedings had in the County Court of Albemarle County, Virginia, in 1901, where the plaintiff then resided, alleging that the plaintiff had previously been adjudged insane in New York and asking for an examination as to his then condition. Whereupon, said Virginia Court made an inquiry into the sanity of the plaintiff-in-error and found that he was sane and capable of managing his affairs and issued its decree accordingly on November 6th, 1901. This evidence was all excluded by the Trial Court.

Hon. Micajah Woods, a lawyer of Albemarle, Virginia, was called and asked whether or not he represented the plaintiff as attorney in the said proceedings inquiring into the sanity of John Armstrong Chaloner, instituted in Albemarle County, Virginia, by C. Ruffin Randolph on September 20th, 1901, and which was decided on November 6th, 1901. Plaintiff also offered to show by this witness under what procedure and what law C. Ruffin Randolph filed this application in reference to the sanity of this plaintiff in the Albemarle County, Va., proceeding in 1901. The Virginia record was marked Plaintiff's "Exhibit 7" for identification. Exception was duly taken to the refusal of the Court to admit this exemplified copy of the record of these Virginia proceedings. By stipulation it was agreed between counsel in the case that the Virginia record, marked Plaintiff's "Exhibit 7" for identification, should be handed up to the United States Circuit Court of Appeals for the Second Circuit on appeal as if said record were a model exhibit. Micajah Woods also gave evi-

dence as to a certain letter received by him from the plaintiff-in-error, dated July 30th, 1897, which evidence went to prove the plaintiff's sanity at that date. This letter also shows plaintiff's statement as to his residence in Virginia at the date of his commitment to the "Bloomingdale" Insane Asylum. See offer as made by counsel, and the exclusion by the Court with exception to the plaintiff.

John Armstrong Chaloner, the plaintiff-in-error, also gave clear, lucid and convincing testimony in this case by deposition as appears by the record herein.

After dealing with the question of plaintiff's residence, plaintiff offered to prove by the plaintiff himself that he was lured into the State of New York for the purpose of being thrown into "Bloomingdale" Asylum and to show that the proceedings and the testimony upon which they were based, which resulted in his confinement in "Bloomingdale" Asylum, were void and false upon their face. The Court declined to receive this testimony, holding as a matter of law that the defendant is not responsible for the illegal acts of those who placed the plaintiff in "Bloomingdale." The Court said, "I will assume for the purpose of this case that he was lured." The Court also took the position that it was not a question, in this case, as to whether the order of Judge Gildersleeve, of the New York Supreme Court, directing the confinement of the plaintiff to the Asylum, is void. The learned Court, at this point, stated that a proceeding in a civil suit to recover money on a debt would be void if the person on whom service was made was lured into the jurisdiction. But the Court held that a judgment determining a man's sanity is a fact which does not depend on how the respondent was brought into the jurisdiction of the court. The Court also stated that no matter how he comes to a particular

place, how he is brought or by what fraudulent means he is brought there, the Court still has jurisdiction over his person and his property.

Finally, the Court said, "Any testimony that you may wish to offer in regard to the sanity of Mr. Chaloner I shall exclude. Any evidence that you wish to offer tending to show that he was lured into the State I shall exclude if that is the only object of the testimony." Exception was duly entered to the Court's ruling in this regard. It was then conceded by counsel for defendant that the plaintiff's counsel duly offered evidence in the depositions of witnesses to show that John Armstrong Chaloner is sane, and always has been a sane man, which testimony was excluded by the Court on defendant's objection, on the ground that it had no materiality to the issues, with exception to the plaintiff-in-error.

The plaintiff was not permitted by the Court to show the motives back of the conspiracy and the luring which resulted in the plaintiff's confinement in an insane asylum. This testimony was offered in connection with the deposition of Winthrop Astor Chanler, one of the petitioners in the commitment proceedings. For the same reason he was not permitted to show fraud in said commitment proceedings and in particular the false statement alleged to have been made by Arthur A. Carey, one of the said petitioners.

The plaintiff's next offer related to the failure on the part of the defendant at the time of the application for his appointment as committee to give notice to John Armstrong Chaloner of such application; also, that the defendant was aware of the Virginia proceedings at the time of such application and in particular that the defendant knew that John Armstrong Chaloner had been previously adjudged sane in the State of Virginia. The Court said, "I exclude any evidence tending to show

that," to which an exception was duly entered. Also, the Court excluded evidence tending to show that Prescott Hall Butler, the predecessor of Thomas T. Sherman, as committee, was represented by counsel in the Virginia proceedings at which the plaintiff was declared sane. The further testimony of more than twenty (20) other witnesses, all tending to show that the plaintiff was and is sane, was next excluded by the Court, and finally, to summarize, the Court excluded the following:

1.—All proof of the sanity of John Armstrong Chaloner, the plaintiff herein.

2.—All proof of the fact that John Armstrong Chaloner was declared sane by the decree of a Virginia Court prior to the appointment of Thomas T. Sherman as committee of said plaintiff.

3.—All evidence to show that the plaintiff was at all times during the 1897 and 1899 proceedings a citizen of the State of Virginia and that the New York Court was thereby without jurisdiction over him.

4.—All proof that John Armstrong Chaloner was lured into the jurisdiction of the New York Court for the purpose of committing him as an insane person in a New York institution.

5.—All proof of plaintiff's inability to attend, while confined in an insane asylum in Westchester County, the so-called 1899 Sheriff's jury proceedings which were held in New York County in the absence of John Armstrong Chaloner, the subject-matter of that inquiry.

6.—All proof as to the physical disability of the plaintiff at the time of this proceeding going to show that there was no real contest and that there was fraud in their inception.

7.—Proof of the continuing condition of sanity of John Armstrong Chaloner.

8.—Proof of the sanity of John Armstrong Chaloner by his written documents.

To the refusal of the learned Court to receive evidence upon any of the foregoing elements and issues in this case, exception was duly taken by the plaintiff-in-error. Thereupon, the defendant moved for the direction of a verdict for the defendant. The Court, after stating the grounds for its opinion, granted this motion, and on March 6th, 1912, judgment was entered in favor of the defendant. The Court, in directing a verdict for the defendant, ruled in effect that the plaintiff-in-error had no right of recourse to the Federal Court. In denying relief to the plaintiff in the United States Court, the Court held that the plaintiff's only remedy was to apply to the New York Supreme Court. Hence, although the plaintiff is still a resident of another sovereign State, and although the amount involved in this action is more than two thousand dollars ($2,000), he was by the said United States District Court denied the right to a trial by jury in a Court of competent jurisdiction. Because of the ruling above set forth and more specifically set forth in the assignment of errors filed by the plaintiff-in-error, in the United States Circuit Court of Appeals, the plaintiff-in-error, subsequent to March 6th, 1912, procured from the United States District Court for the Southern District of New York a writ of error to review said judgment, and such proceedings were had therein that an order of the United States Circuit Court of Appeals for the Second Circuit was made and entered, confirming in all respects said judgment with costs, and on the 18th day of June, 1914, a mandate was duly issued thereon to the Judges of the United States District

Court for the Southern District of New York, and a judgment was thereon, on the 27th day of June, 1914, duly entered, affirming in all respects the said final judgment of March 6th, 1912.

Thereafter, to-wit, on the 6th day of April, 1915, the plaintiff-in-error procured from the said United States Circuit Court of Appeals for the Second Circuit an order that a writ of error be allowed, to have reviewed in the Supreme Court of the United States the judgment theretofore entered on the 27th day of June, 1914, which affirmed the final judgment therein entered on the 6th day of March, 1912, and a further order that all further proceedings be superseded and stayed until the final determination of said writ of error by the said Supreme Court of the United States, and until the further order of the United States Circuit Court of Appeals for the Second Circuit.

A writ of error and citation was thereupon duly issued to the plaintiff-in-error, who duly served same, and his assignment of errors, upon the defendant in this action.

Because of the rulings of the United States Circuit Court of Appeals for the Second Circuit set forth and more specifically referred to in the annexed assignment of errors, the plaintiff-in-error begs leave to appeal to this Honorable Court.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

JOHN ARMSTRONG CHALONER, Plaintiff-in-Error,

against

THOMAS T. SHERMAN, Defendant-in-Error.

Assignment of Errors.

Now comes the plaintiff-in-error, John Armstrong Chaloner, herein by William D. Reed, his attorney, and respectfully submits and presents and files his assignment of errors complained of and says: That in the record of the proceedings in the above entitled cause in the United States Circuit Court of Appeals for the Second Circuit, there is manifest error in this, to-wit:

First: That the learned United States Circuit Court of Appeals for the Second Circuit erred in affirming the judgment of the United States District Court for the Southern District of New York, dismissing the complaint filed by the plaintiff-in-error in said cause.

Second: That the learned United States Circuit Court of Appeals for the Second Circuit erred in affirming the decision of the Trial Court in holding that the plaintiff Chaloner's present condition of sanity never became an issue in the case and could never become so unless the court below had been justified in collaterally

setting aside the decretal order or unless the defendant had adduced some evidence of present incompetency as an affirmative defense.

THIRD: That the learned United States Circuit Court of Appeals for the Second Circuit erred in affirming the decision of the trial court in excluding testimony to show the mental condition of the plaintiff, Chaloner, in 1899, and in holding that that issue could not be litigated in this action and was solely for the New York Courts.

FOURTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that whether or not, in 1897, the plaintiff was lured into this State was immaterial.

FIFTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the New York Court had jurisdiction over the plaintiff in the 1899 proceedings, even assuming that the plaintiff was at all times a resident of Virginia.

SIXTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the question of plaintiff's residence was one of the facts in issue in the 1899 proceedings and having been there adjudicated that it cannot be collaterally attacked.

SEVENTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in affirming the rulings of the Trial Court in excluding testimony offered to show that the testimony in the 1899 proceedings was perjurious.

EIGHTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the plaintiff, Chaloner, failed to appear in the 1899 proceedings after due notice of the order or judgment to appear.

NINTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that care was exercised in serving the various notices of motions and proceedings on the plaintiff, Chaloner.

TENTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in its finding that the plaintiff, Chaloner, deliberately failed to appear in the 1899 proceedings.

ELEVENTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in finding that full opportunity was afforded to the plaintiff, Chaloner, to appear in the 1899 proceedings.

TWELFTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the propriety and sufficiency of the notice to the plaintiff, Chaloner, of the 1899 proceedings are no longer open to question.

THIRTEENTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that in regard to the failure to give the plaintiff, Chaloner, notice of the resignation of the committee, Butler, and the appointment of Sherman, as committee, that there is no statutory requirement of notice in such a proceeding and that notice to the committee of a proposed removal is the only notice required.

FOURTEENTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that if notice were required the failure to give it is an irregularity which must be dealt with by the State Court of original jurisdiction.

FIFTEENTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the judgment of the New York Court was not a void judgment.

SIXTEENTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the judgment of the New York Court must remain valid until reversed or set aside by the Courts of New York.

SEVENTEENTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that the judgment of the Supreme Court of New York remains today in full force and validity.

EIGHTEENTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that if the petitioner's sanity is established and even if some of the requirements of the statute had been omitted or neglected or insufficient evidence of insanity was adduced, relief must be obtained in the court which appointed the committee.

NINETEENTH: That the learned United States Circuit Court of Appeals for the Second Circuit erred in holding that this Federal Court has not jurisdiction to set aside or annul the judgment of the State Supreme Court.

WHEREFORE the said plaintiff-in-error prays that the judgment of the Circuit Court of Appeals for the Second Circuit and the judgment of the District Court of the United States for the Southern District of New York be reversed and such directions be given that full force and efficacy may enure to said plaintiff-in-error by reason of the allegations set up in the complaint filed in said cause.

WILLIAM D. REED,
Attorney for plaintiff-in-Error,
John Armstrong Chaloner.

Office and postoffice address: 45 Cedar Street, Borough of Manhattan, New York City.

(*From Trial Brief* in Chaloner* against *Sherman*, pp. 152-163.)

THE NINETEEN POINTS.

POINTS OF LAW.

POINT 1.—The commitment proceedings were void for the following reasons, to-wit: There was fraud and trickery in luring the plaintiff, John Armstrong Chaloner, a citizen of Virginia, into a foreign jurisdiction for the purpose of depriving him of liberty and property on a false charge of insanity.

POINT 2.—The said proceedings were void for the following reason, to-wit: There was fraud and trickery upon the part of the Medical Examiners in Lunacy in the pay of the petitioners, who, in order to keep plaintiff in ignorance of the acts of the said petitioners, and that he should have no knowledge of the impending action,

*Written by plaintiff-in-error in 1902-1904. Printed and copyrighted, 1905.

upon the part of the said petitioners, to deprive him of liberty and property on the said false charge of insanity, pretended to have an interest in trance-states and requested plaintiff to enter a trance in order, as they alleged, that they might for purely scientific reasons, note the action of a trance. Plaintiff, to oblige said Examiners in Lunacy, who never announced themselves as such, but kept said fact strictly in the background, and appeared in the guise, one of a surgeon, the other of an oculist—entered said trance. While in said trance, plaintiff made some remarks. Said remarks form the main charge against the sanity of the plaintiff. Said remarks were made wholly without the slightest ratiocination or volition upon plaintiff's part, except that, to oblige the said surgeon and the said "oculist," he permitted himself to enter said trance and while in said trance, for purely scientific reasons, temporarily surrendered his reasoning and speaking faculties to the influence of said trance. The said medical men expressed themselves as interested in said trance-phenomena, and thereupon took their departure. They visited plaintiff on one other occasion when the trance was resumed. Thereupon after a discussion of trances in general and plaintiff's in particular, said parties departed. A short time thereafter the "oculist" appeared and brusquely informed plaintiff, who was at his rooms at a hotel in New York City, at which he was temporarily sojourning, and in which rooms the said conversations had taken place, that he was insane and that he must accompany said "oculist," who now, for the first time, disclosed his identity, and said that he was a Medical Examiner in Lunacy, employed by the said petitioners. Plaintiff laughed at the allegations of insanity, and requested said examiner in lunacy to state the grounds upon which said allegation was based. Said medical man thereupon said,

"The things you said in the trance." Plaintiff laughed at this, whereupon said medical man said: "Don't you believe the things you said in the trance?" Upon which plaintiff replied with an emphatic negative. Plaintiff declined to accompany said medical man, whereupon, some twenty hours later, March 13th, 1897, plaintiff was arrested by two policemen in plain clothes in his said rooms, and taken by them to The Society of the New York Hospital at White Plains, Westchester County, New York, falsely known as "Bloomingdale," and there incarcerated for three years and eight months in a barred cell, on a false charge of lunacy; until Thanksgiving eve, 1900, when plaintiff escaped and fled to Philadelphia. Plaintiff was, of course, no more legally accountable for what he said in said trance, under the said circumstances, than he would have been legally accountable for remarks made in his sleep.

POINT 3.—The said proceedings were void for the following reason, to-wit: There was fraud upon the Court, as well as upon the party, upon the part of the said Medical Examiners in Lunacy. Said medical men doctored plaintiff's trance utterances; that is to say, said medical men divided said trance utterances into two divisions. The first division said medical men took out of the said trance utterances, and placed by themselves. The second division said medical men mixed; leaving part to be guessed at by the Court, and taking the other part out of said trance utterances. The parts in both instances which were taken out of the trance utterances were stated by said medical men as having been said by plaintiff, leaving it to be inferred that said parts were not parts of said trance utterances but were plaintiff's own views which, upon the evidence, it being admitted by said medical men that plaintiff "frequently went into a

trance-like state," upon said evidence they emphatically were not. Furthermore: Said medical men also swore that plaintiff was "violent" and "dangerous," two allegations profoundly false, and totally disproved by plaintiff's conduct at the time, and during the three years and eight months he was incarcerated at White Plains. In the proceedings in 1899 not one word was said about plaintiff's being dangerous or harmful to himself or anybody else, not one word even by the paid witnesses of the other side, and plaintiff had then been for over two years under observation.

POINT 4.—The said proceedings were void for the following reasons, to wit: There was perjury upon the part of the said petitioners who, although at the time the said falsely alleged acts on the part of plaintiff were falsely sworn, of their own knowledge, by said petitioners, to have occurred at plaintiff's home in Virginia, said petitioners were widely separated from plaintiff; one of the said petitioners being in New York, one of the said petitioners being in New England, and the third of the said petitioners being in England.

POINT 5.—The said proceedings were void for the following reason, to wit: There was fraud upon the Court as well as upon the party, upon the part of the said petitioners. For the foundation of the commitment proceedings had in New York City, March 10, 1897, was the sworn testimony of the said petitioners who—with the exception of the said medical men—were the only witnesses sworn at said proceedings; and the Court relied upon the truth of the oaths of said petitioners that their said allegations against the plaintiff's sanity were *of their own knowledge,* whereas they were emphatically the reverse.

POINT 6.—The said proceedings were void *in toto,* for the reason that owing to the fact that plaintiff was kept away from Court by perjury and trickery, as aforesaid, there was no real contest.

POINT 7.—The said proceedings in 1899 were void *in toto,* for the reason that owing to the fact that plaintiff, by contrivance, was kept away from Court, there was no real contest. The said contrivance being that instead of setting the hearing in the County Court House of Westchester County, at White Plains, where plaintiff was confined, said hearing was set in Manhattan, over twenty miles away. This was done to keep plaintiff out of Court, for said petitioners were in a position to know of plaintiff's physical disability, aforesaid, at the time. Whereas had said hearing been set at White Plains Court—less than a mile from plaintiff's cell—plaintiff could have been carried there in a carriage without danger of injury to him; or, if that was not done, committees of the said [illegible]mission and jury could, in an hour, have visited [illegible]d examined him.

P[illegible] said proceedings in 1899 were void for th[illegible]asons, to wit:

The only evidence of plaintiff's alleged incompetency came from the said two medical men in the pay of the other side, and from the said Medical Superintendent of The Society of the New York Hospital. Said evidence was on the evidence strictly of two varieties, to wit, frivolous, or perjured. The basis of the allegations of the two said medical men against plaintiff's competency and sanity was the aforesaid trance. At the *special request* of said medical men plaintiff, for scientific reasons, entered a trance in order that he might hear the comments thereon of two medical men

who alleged that they were interested in trances. The only time that plaintiff entered a trance during his stay of three years and eight months at White Plains was in the presence of said medical men. Plaintiff did not hesitate to do this, although the doing of it had already got him in trouble, for the reason that plaintiff being a lawyer knew his rights, and knew that he had a legal right to enter a trance. Said medical men had deliberately lied to plaintiff. Said medical men had deliberately deceived plaintiff. Plaintiff upon the appearance of said medical men, had at once asked them, "Do you represent anybody?" To which they both promptly replied that they represented no one. That the reason for their visit was that a friend of plaintiff's, whom they voluntarily and without questioning upon plaintiff's part named, had requested them to call and see plaintiff as said friend was anxious that plaintiff should get out of "Bloomingdale." Plaintiff later communicated with said friend and found that there was not a word of truth in said medical men's assertion touching said friend's share in said medical men's visit. It developed later that said medical men were sent by the other side to obtain testimony for the other side at said proceedings in 1899. The portions of said medical men's said testimony concerning plaintiff's said trance is, of course, frivolous, from a legal standpoint; a party having—under the said circumstances—a legal right to enter a trance.

(b) A specimen of said medical men's evidence had to do with matter touched on in a letter attached to plaintiff's present affidavit, which letter plaintiff had written to a legal friend on March 26, 1900, requesting him to procure counsel for plaintiff in order to institute *habeas corpus* proceedings to procure plaintiff's release. Plaintiff in said conversation with said medical men,

touched on in said letter, strongly censured the parties directly or indirectly interested in holding plaintiff a prisoner on a false charge, and under void proceedings. Said medical men to whom plaintiff had spoken as freely upon said topics as in said letter, palpably—as will appear upon reading said medical men's sworn evidence at the said proceedings in 1899, and as will appear upon reading in connection therewith plaintiff's said attached letter—said medical men palpably and in a most barefaced and preposterous fashion garbled the substance of said conversation and of said letter. The balance of material allegations are on a par with above for barefaced perjury. Lastly, said medical men palpably perjured themselves on the witness stand at said proceedings in 1899, by swearing in effect that plaintiff was not only hopelessly insane and incompetent, but that plaintiff was increasingly so, and that plaintiff's falsely alleged insanity and falsely alleged incompetency would increase with the lapse of time; all of which palpably perjurious allegations have been abundantly disproved by plaintiff's acts since said trial, and by plaintiff's trial November 6, 1901, in the County Court of Albemarle County, Virginia, the same being a court of record, in which county plaintiff's home is; at which trial plaintiff was declared both sane and competent; said trial having been instituted by a neighbor, upon plaintiff's reappearance at plaintiff's said home after plaintiff's said escape, with a view to ascertaining plaintiff's sanity and competency; plaintiff at this time standing under the said void New York proceedings, in the light of an escaped lunatic, whom it was dangerous to allow at large. Plaintiff has since lived continuously at his said home in Albemarle County, Virginia, undisturbed.

And all of which plaintiff-in-error offered to prove on the trial in the lower Court, but was barred from doing

so by the erroneous rulings of the learned Trial Judge. (pp. 30-33, fols. 57-63; pp. 57-60, fols. 107-112.)

POINT 9.—The said proceedings were void *in toto* for they were without due process of law, and, therefore, unconstitutional, for the following reason: There was lack of notice.

POINT 10.—The said proceedings were void for the following reason, to-wit: They were summary. Lunacy proceedings in New York State are mandatory, in derogation of common law rights, and must, therefore, be strictly observed in pursuance of the statute. While said commitment was, in fact, made to the Society of the New York Hospital, it was not so stated; the term Bloomingdale Asylum being used, an institution unknown to the law.

POINT 11.—The proceedings in New York City in 1899, before a Commission and a Sheriff's jury to declare plaintiff an incompetent person *in absentia*, plaintiff never being before the jury or represented in Court in any way, were void *in toto;* for they were without due process of law, and therefore unconstitutional, for the following reasons: (a) There was lack of proper notice, for the plaintiff being at the time in duress of imprisonment, illegally confined under void proceedings, and without access to counsel, the so-called notice was no notice at all. (b) There was lack of opportunity to appear and be heard. For plaintiff, upon the sworn testimony of the medical men in the pay of petitioners, was incapacitated from coming into Court, plaintiff being in bed with an affection of the spine at the time of said trial, and having been so for more than three weeks previous thereto.

POINT 12.—The said proceedings in 1899 were void for lack of due process of law for the following reasons, to-wit: *Said trial was had in absentia.* The Court failed to direct the appearance, before said Commission and said Sheriff's jury, of plaintiff and the Court also failed to direct that, failing this, said Commission and jury or committees made up therefrom should visit plaintiff in his cell in the Society of the New York Hospital, at White Plains.

POINT 13.—The said proceedings in 1899 were void for lack of due process of law, for the following reasons, to-wit: (1) Although notice of the said proceedings could have been given days earlier, the order was barely complied with in giving the required five days, and the hearing placed at the unheard of hour of four o'clock in the afternoon in New York City, more than twenty miles away from White Plains, where plaintiff was confined. This would naturally hurry the trial. (2) The constitutional guarantee of due process of law applies to the proceedings at the trial. It compels an orderly, fair, reasonable presentation of the facts, and a legal conclusion therefrom. At the said jury trial in this case there was a most colossal disregard of the rights of liberty and property. When the evidence was in—and there seemed some chance of the appearance of the plaintiff—the foreman of the said Sheriff's jury stated to the said Commission: "It will be very hard to bring this jury here again and it is not their desire to have an adjournment of this inquest. They think the case can be submitted upon the testimony which has been given. They do not wish to have the respondent placed upon the stand." And this from the foreman of a Sheriff's jury where the liberty and property of a citizen were at stake, and where said jury had not been employed for weeks or

even days upon said case, but had met for the first time in their lives on said case, at four o'clock that afternoon.

POINT 14.—The said proceedings in 1897 and the said proceedings in 1899 were void *in toto* from lack of proper evidence. Unless there is clear proof of insanity a judgment against the party founded thereon runs foul of the constitutional provision. On the maxim that "only the best evidence procurable is admissible" no evidence, short of the alleged lunatic's personal appearance in Court or before a committee of the jury, can be the best evidence procurable of said alleged lunatic's mental and physical condition. Anything short of said personal appearance is purely *ex parte* and therefore void. The sum total of the evidence against plaintiff in the proceedings in 1897 was made up of either purely perjured testimony upon the part of the said petitioners, or purely bought and paid for testimony upon the part of the said medical examiners in lunacy hired by the said petitioners. The sum total of the evidence against plaintiff in the proceedings in 1899 was made up of the aforesaid evidence, perjured testimony, upon the part of the said medical examiners in lunacy, who, as in the first instance, were in the pay of the other side. The bulk of the evidence in both said proceedings had to do with the purely frivolous charge that plaintiff entered upon occasional trances, and trance-like states. Not one word was uttered at either of the said proceedings against plaintiff's business capacity, or business judgment, or business foresight, or business prudence. And this fatal omission was in the teeth of the fact that plaintiff was, at the time the said proceedings in 1897 were instituted, actively engaged in large business operations, in which plaintiff had been engaged for four years past, and was holding the position as a member of the Board of Direc-

tors in two large corporations at the time of plaintiff's said arrest and imprisonment upon a false charge of lunacy (pp. 36-37, fols. 69-71; pp. 46-47, fols. 87-89). Not a single one of plaintiff's associates upon said Boards was called as a witness against plaintiff's sanity. In short the whole evidence in plaintiff's case goes to prove plaintiff's permanent and unbroken sanity and competency through life. (See Plaintiff's Exhibit 3, and Plaintiff's Exhibit 7 for identification.)

POINT 15.—Plaintiff's sanity at the time of arrest is proved by plaintiff's letter to Hon. Micajah Woods, dated July 3rd, 1897, upon Mr. Justice Harlan's opinion in the Runk case, which holds that a written instrument by a person accused of insanity may successfully offset *prima facie* evidence of insanity. (See Plaintiff's Exhibit 6 for identification.) This document, written by the plaintiff in July, 1897, was erroneously excluded by the Trial Court. (pp. 60-61, fols. 113-116.)

POINT 16.—The said proceedings in 1899 were void for the reason that the only evidence of plaintiff's alleged incompetency came from two medical men in the pay of the said petitioners, and from the medical men in charge of the Society of the New York Hospital where plaintiff was confined, and to whose pecuniary interest it was therefore—plaintiff being the highest pay (falsely alleged) "patient" in said hospital—to keep plaintiff in said hospital as long as he could; and said paid for, or otherwise pecuniarily interested, evidence, standing uncontradicted—for the reason aforesaid that plaintiff was by said contrivance aforesaid kept out of Court and therefore was unable to contradict said evidence—said evidence standing uncontradicted was not a valid foundation for the judgment which followed.

POINT 17.—Even if the judgment of the New York State Courts in 1897 and 1899 aforesaid, were not totally null and void for the reasons aforesaid, the said judgments are now *functus officio* for the reason that they have nothing to feed upon, a judgment in insanity self-evidently—since insanity is not always incurable—not being a continuing one, and plaintiff having been found to be both sane and competent, as well as a citizen of Virginia, by the said judgment rendered November 6, 1901, by the said Virginia Court (Plaintiff's Exhibit 7 for identification).

POINT 18.—Upon the above grounds of fraud, want of jurisdiction, lack of due process of law, unconstitutionality, illegality, nullity, and *functus officio* the said New York proceedings may be attacked collaterally; and T. T. Sherman, the so-called committee of plaintiff's person and estate, who is merely a Trustee *ex maleficio* may be assailed as a trespasser upon plaintiff's property.

POINT 19.—Plaintiff being a citizen of Virginia, and the said alleged committee of plaintiff's person and estate being a citizen of New York and doing business in New York City, and the amount in controversy being over three thousand dollars, the Federal Circuit Court for the Southern District of New York has jurisdiction.

The foregoing nineteen points of law are discussed in detail and at length hereinafter.

WHAT WE SHALL PROVE.

Upon the accompanying authorities we shall establish the above points of law. In particular:

First.—That Point 9 proves the constitutional right to notice.

Second.—That Point 11 proves the constitutional right to opportunity to appear and be heard.

Third.—That Point 12 proves that trials *in absentia* are illegal.

Fourth.—That Point 15 proves that an instrument written by a person accused of insanity may successfully offset said charge.

The evidence offered by the plaintiff-in-error on the trial of this case, but excluded by the Court with exception to the plaintiff, would have shown:

(1) That plaintiff has always been sane and competent (Transcript of Record, pp. 57-58, fols. 107-113.)

(2) That plaintiff was lured into a foreign jurisdiction under false pretenses for the purpose of depriving him of liberty and property upon a false charge of insanity (pp. 46-49, fols. 87-92.)

(3) That plaintiff and petitioners had, for a long period, been on unfriendly terms; and that interested motives had to do with the said lunacy proceedings being instituted.

(4) That facts were purposely withheld from the Court, and proceedings taken, which, if known to the Court, would have prevented the judgment received. (pp. 30-33, fols. 56-63.)

(5) False statements upon the part of the petitioners and others in connection with said case (p. 25, fols. 47-49; pp. 26-30, fols. 50-57).

(6) Conspiracy in connection with said case. (pp. 30-33, fols. 56-63.)

(7) And generally, that the Court was scandalously used as a machine for achieving a criminal purpose.

Upon the accompanying authorities we shall establish the above points of law.* The documents annexed to plaintiff's affidavit and the documents annexed to this brief will show that we shall prove in this case:

(1) "That plaintiff has always been sane and competent."

Said letter of July 3rd, 1897, and said Trial Brief prove said contention: Supported by Mr. Justice Harlan's said opinion in the Runk case aforesaid, which maintains that a written instrument by an alleged lunatic can successfully offset medical evidence against the writer's sanity.

(2) "That plaintiff was lured into a foreign jurisdiction under false pretenses for the purpose of depriving him of liberty and property, upon a false charge of insanity."

The said statement of facts proves said contention.

(3) "That plaintiff and petitioners had, for a long period, been on unfriendly terms; and that interested motives had to do with the said Lunacy Proceedings being instituted."

The said letters from plaintiff's family annexed to plaintiff's affidavit aforesaid as well as plaintiff's allegations thereanent in said letter of July 3rd, 1897, to Captain Micajah Woods corroborated by said letter of the late Hon. James Lindsay Gordon, aforesaid, prove said contentions (page 134, Trial Brief on file in *Chaloner* against *Sherman*).

(4) "That facts were purposely withheld from the Court, and proceedings taken, which, if known to the Court, would have prevented the judgment received."

The said statement of facts proves said contention.

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*1905 Trial Brief, third line foot page 537.

(5) "We shall show false statements upon the part of the petitioners and others in connection with said case."

The said commitment papers and plaintiff's examination of the testimony of the proceedings of 1899 prove said contention.

(6) "We shall show conspiracy in connection with said case."

The said statement of facts proves said contention.

(7) "And generally, we shall show that the Court was scandalously used as a machine for achieving a criminal purpose."

The said statement of facts proves the said contention.

EPITOME.

The plaintiff in said case being a citizen of Virginia, while being interested in a law business in New York City and a manufacturing business in North Carolina, occasionally visited New York. Upon one of said occasional trips to New York an altercation of a business nature arose between plaintiff and a certain party who later assumed the role of one of the three petitioners in a proceeding to have plaintiff declared and locked up as a lunatic. Shortly after said altercation plaintiff returned to plaintiff's home in Virginia.

It might be as well to observe that besides the aforesaid occupations plaintiff, a Master of Arts of Columbia University, had more or less kept up an interest in psychology after graduating therefrom, and had for some four years previous to March, 1897—the time of the bringing of the said proceedings in lunacy—spent much spare time—after business hours—in carrying on investigations in experimental psychology which, strangely enough, resulted in plaintiff's developing mediumistic

or psychic powers a few months before March, 1897. It should be borne in mind that plaintiff, though being a so-called medium, is and always has been strongly anti-spiritualistic in plaintiff's bent, attributing said mediumistic phenomena, such as automatic writing, and trances, and trance-like states, to purely psychological forces.

Said party with whom plaintiff had had said business altercation, hearing of plaintiff's said experiments in experimental psychology, saw an opportunity. Said party thereupon sent an emissary, accompanied by a physician, totally unannounced, to plaintiff's home in Virginia in February, 1897, with the purpose thereby of enticing plaintiff to the City of New York, with the purpose of there incarcerating plaintiff for life upon a trumped-up charge of lunacy based upon plaintiff's utterances while in said trance-like states. Said emissary, being a very old and very intimate friend of plaintiff—albeit said emissary and plaintiff's relations were at said time a trifle strained from a rather abusive letter said emissary had written plaintiff recently—plaintiff yielded to the urgent appeals of said emissary to accompany said emissary to New York. Plaintiff was further led to do so as plaintiff had some business in New York at said time which needed looking after.

Upon reaching New York City plaintiff was approached by said emissary and said physician with regard to favoring said parties with the sight of plaintiff in a trance. Plaintiff readily complied in the privacy of plaintiff's rooms in the hotel at which plaintiff was stopping in New York City.

Shortly thereafter said physician brought a perfect stranger into plaintiff's said rooms without announcing said stranger. Plaintiff expostulated with said physician thereupon, but finally to oblige said physician, complied with said physician's request and entered a trance-

like state before said stranger. It might be as well to observe that said stranger presented himself under false colors, since said stranger pretended to be an oculist while in reality said stranger was a medical examiner in lunacy.

Shortly thereafter said stranger reappeared in plaintiff's rooms after dark, and ordered plaintiff to get up—plaintiff was in bed at said time—and accompany said stranger to an unnamed destination. Said stranger promptly warned plaintiff that resistance would be useless since said stranger had another man in the next room and two other men outside the door. Plaintiff perfectly quietly and without the slightest show of force, as promptly convinced said stranger that said stranger had failed to bring enough men to carry off plaintiff that night. Next day two police officers in plain clothes presented themselves at plaintiff's said hotel, and plaintiff, without unnecessary argument, permitted said policemen to escort plaintiff to the Society of the New York Hospital, at White Plains, New York.

It turned out that said party joining with two other parties had run plaintiff into an insane asylum upon a false charge of lunacy, in order to get plaintiff out of the way. It might be as well to state that plaintiff was on exceedingly bad terms with said two other parties, who therefore readily joined said party in said conspiracy.

After efforts, extending over a period of nearly four years, plaintiff abandoned all hope of ever getting out of said insane asylum alive and thereupon decided to escape therefrom, and did escape therefrom, thereupon.

After six months' voluntary stay in a private sanitorium in Philadelphia, whither plaintiff had fled to safety, and to have plaintiff's sanity and competency tested as a set-off to the nearly four years aforesaid of false imprisonment upon said trumped-up charge of

lunacy and incompetency, plaintiff spent six weeks at another private sanitorium in Delaware County, Pennsylvania, after the summer-closing of said Philadelphia sanitorium; and while plaintiff was waiting for plaintiff's Virginia counsel to get through said counsel's legal engagements sufficiently to together meet plaintiff in conference in Virginia. Thereupon plaintiff set out for Virginia. Thereupon plaintiff landed in Lynchburg, Virginia, where plaintiff remained until the twentieth of September, 1901, when plaintiff, accompanied by plaintiff's said counsel, put in an appearance at Charlottesville, Va., the county town of the county in which plaintiff's home is situated. Thereupon plaintiff was tried—November 6th, 1901—in the County Court of said Albemarle County, Virginia, situated at Charlottesville, aforesaid, in a proceedings brought by a neighbor of plaintiff in said county, in order to ascertain whether or not a Committee for the person and property of plaintiff should be appointed, since plaintiff was regarded as a dangerous escaped lunatic upon the strength of plaintiff's said nearly four years' imprisonment in said insane asylum. Thereupon plaintiff was fully acquitted of said charge of being a lunatic and said Court dismissed said petition for a Committee of plaintiff's person and estate. Thereupon plaintiff and plaintiff's New York counsel have been at work upon plaintiff's case. Plaintiff has written this entire brief, since plaintiff, being a psychologist as well as a member of the New York Bar of more than twenty years' standing, was equipped therefor. The delay in getting to Court is amply accounted for in said brief.

FROM

APPEAL BRIEF.

IN *Chaloner* against *Sherman*

TO

THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

Your petitioner respectfully suggests that a word of explanation may not be out of place concerning the unusual circumstances of your petitioner's drawing up his own brief on appeal.

Briefly the circumstances are these:

The entire substance-matter making up said brief on appeal is taken from books or documents already copyrighted or written by your petitioner.

For example. The entire list of authorities is drawn from the fifteen hundred page law book, copyrighted by your petitioner in 1905—after requiring two full years of incessant and arduous toil and research upon your petitioner's part to write—and in the evidence at the trial of this case entitled "*Brief and Appendix in Chaloner against Sherman," containing Brief and Argument-in-Writing.

The assignment of errors hereto annexed was drawn by your petitioner.

Lastly. The argument in the shape of parallels—and so designated—in which the rulings of the United States Circuit Court of Appeals for the Second Circuit, in 162

*Described hereafter as Trial Brief.

Federal Reports, 19, are paralleled by those of the learned Trial Court and where the more than a score of instances in which said learned Trial Court reversed the rulings of the learned Appellate Court, are briefly set forth for the convenience of this learned Court in the form of parallels, to save labor and time in this most voluminous case; said parallels were drawn up by your petitioner.

The statement of facts and the law of this case cannot be more comprehensively or succinctly put than by the learned United States Circuit Court of Appeals for the Second Circuit, in its opinion handed down May 11th, 1908, and entitled 162 Federal Reports, 19. Your petitioner therefore inserts said 162 Federal Reports, 19, *in extenso*.

162 Federal Reports, 19.

Chanler v. *Sherman.*

(Circuit Court of Appeals, Second Circuit.)

May 11, 1908.

No. 201.

In error to the Circuit Court of the United States for the Southern District of New York, W. D. Reed, for plaintiff-in-error; Evarts, Choate and Sherman (J. H. Choate, Jr., and George L. Kobbe, of counsel), for defendant-in-error.

Before Lacombe, Coxe and Noyes, Circuit Judges.

Noyes, Circuit Judge:

"This appeal is from the denial of a petition for

an auxiliary order in the nature of a writ of protection, in an action at law for conversion.

"The situation as disclosed by the record in the action and by the affidavits upon the petition may be thus briefly stated.

"(1) In 1897 the petitioner—being the plaintiff in said action—was adjudged insane by a Justice of the Supreme Court of New York, and ordered committed to 'Bloomingdale' Asylum, an institution for the custody of the insane, to which he was duly taken and from which he escaped in 1900 and went to Virginia.

"(2) In 1899 an order was made by the Supreme Court of New York finding that the petitioner was of unsound mind, and appointing a committee of his person and property, which office is now held by the defendant in this action.

"(3) In 1901 upon an application made to the County Court of Albemarle County, Virginia, where the petitioner then resided, alleging that he had previously been adjudged insane in New York and praying for an examination as to his then condition, said Court found that he was sane and capable of managing his affairs.

"(4) In 1904 the petitioner brought this action in the Circuit Court as a citizen of Virginia averring that he was sane, and had so been declared by the Virginia Court, and that said orders of the Supreme Court of New York and of the justice thereof were void for want of jurisdiction, and demanding damages from the defendant upon the theory that he had converted the property of the petitioner in his hands as committee.

"(5) The defendant in his answer, not only re-

lied upon said New York orders but went further, and alleged that the plaintiff—the petitioner—was and had been in fact insane, and that the judgment of the Virginia Court was collusive and void.

"(6) The time for the trial of said action approaching, the plaintiff filed the present petition, stating that his presence as a witness at the trial was imperatively required, but that in case he returned to New York he was threatened with reincarceration in the asylum, notwithstanding the Virginia decree.

"He therefore prayed for an order protecting him while coming into the State of New York, attending the trial and returning.

"It is apparent from the record that upon the issues as they stand, the attendance of the petitioner at the trial is necessary. His case cannot be presented without him. And it is also most probable that, if the petitioner return to New York without protection he will be apprehended and retaken to the asylum, as an escaped patient. Without relief he is in this predicament. He must abandon his action for the recovery of a quarter of a million dollars in order to retain his freedom, or must abandon his liberty in order to try his case. The Constitution of the United States vests in its Judicial Department jurisdiction over controversies between citizens of different States. The petitioner as a citizen of the State of Virginia in bringing his said suit in the Circuit Court of the United States, was availing himself of a right founded upon this constitu-

tional provision.* And he came into that Court with a decree of the Court of the State of which he was a citizen, declaring his sanity.

"We cannot disregard that decree. In considering it we do not ignore the orders of the Courts of New York. Insanity is not necessarily permanent. For the purpose of this petition—laying aside jurisdictional questions—we may properly consider that the petitioner was insane when so declared in New York, but that he had recovered his sanity when he was dec[illegible] sane in Virginia.

"The question, then, is whether a circuit court of the United States has power to protect a person in the situation of the petitioner while attending the trial of his cause therein. It is objected at the outset that the Circuit Court has no power to grant a protective order because it would have the effect of restraining proceedings in a State Court. Section 720 of the Revised

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*Mr. Justice Harlan in

Arrowsmith v. *Gleason*, 129 U. S.
and
Marshall v. *Holmes*, 141 U. S.

But this Court, observing that *the Constitutional right of the citizen of one State to sue a citizen of another State in the Courts of the United States, instead of resorting to a State tribunal*, would be worth nothing, if the Court in which the suit is instituted could not proceed to judgment and afford a suitable measure of redress, said: "*We have repeatedly held that the jurisdiction of the Courts of the United States, over controversies between citizens of different States, cannot be impaired by the laws of the States which prescribe the modes of redress in their Courts, or which regulate the distribution of their judicial power. Arrowsmith* v. *Gleason*, 129 U. S."

Is it true that a Circuit Court of the United States, in the exercise of its equity powers, *and where diverse citizenship gives jurisdiction over the parties, may not, in any case, deprive a party of the benefit of a judgment fraudulently obtained by him in a State Court*, the circumstances being such as would authorize relief by the Federal Court, if the judgment had been rendered by it and not by a State Court? *Marshall* v. *Holmes*, 141 U. S.

Statutes prohibits the granting of writs of injunction to stay proceedings in any Court of a State, except when authorized in bankruptcy proceedings. But, assuming that the order at present prayed for would have injunctive effect, our attention has been directed to no proceeding pending in a State Court which it would stay.

"It appears that ten years ago a judge of a State Court signed an order committing the petitioner to an asylum, and that the order was complied with. It does not appear that those proceedings are still pending, or that resort to them would be necessary to recommit the petitioner to the asylum. The Statutes of New York apparently provide that patients escaping from insane hospitals may be returned by peace officers and by designated hospital attendants.

"No proceedings in Court seem necessary or to be provided for. The only other proceedings in New York—those in which a committee was appointed —if still regarded as pending would not be stayed by a protection order, because it was not the object of those proceedings to commit the petitioner to an asylum. He was already in one when they were instituted.

"The next objection is that the petitioner ought to apply to the Courts of the State of New York for the recision of the orders committing him to the asylum and appointing a committee of his person and property. We have not the slightest doubt that full justice would be done the petitioner should he submit himself to the jurisdiction of the State Courts.

"But to assume that he was under any obligation to resort to them is to beg the whole ques-

tion at issue. To say that the orders in question were valid and must stand until set aside by the tribunal which granted them, is to assert that the petitioner has no cause of action in the Circuit Court. But he states a cause of action. He asserts that the orders were wholly void for want of jurisdiction. And if they were void, they were of no effect, and the petitioner had a right to assert their invalidity in any Court.

"We now come to the broad question of the power of the Circuit Court to grant a protective writ.

"Such writs have been issued since early times to protect witnesses and parties coming from one State into another to attend a trial, from arrest and detention upon civil process. It is true that if the petitioner were retaken as an escaped insane patient, it would not be upon civil process. But whatever the form of process—if any at all were necessary—the power exercised to retake him would be that of the police. With the exercise of the police power of a State a Court of the United States should not lightly interfere. But we have no doubt of its right to interfere when necessary for the efficient exercise of its own jurisdiction and where the threatened act under the police power must rest for its justification upon the validity of the very matter which the Court is called upon to determine.

"The petitioner was given the right, under the laws of the United States, to try his case in the Courts of the United States. He is not permitted to exercise that full right, and the Court in effect is not permitted to exercise its full jurisdiction, if, while attending the trial and perhaps

before he can be heard, he may be seized and taken to an asylum—and so seized for the reason that he had been previously committed under an order which the petitioner in the very case was asserting to be wholly void. Under such extraordinary conditions, we think the Circuit Court had the power to grant the protective writ.

"Having determined the question of power, we come to the propriety of exercising it.

"Notwithstanding the fact that the petitioner is at liberty in other States, it is suggested that it would be unsafe for him to be brought to New York. If any danger were to be apprehended it would furnish a good reason for refusing the writ. There is, however, nothing in the record to indicate the probability of any such danger and the petitioner's prayer for relief is based upon the express condition that he remain in the custody of United States Marshals during his entire sojourn in the State.

"For these reasons we think a writ of protection should issue if the pleadings in the case remain as they are. The defendant joins issue upon the fact of sanity after the New York orders were made, and also sets up that the Virginia decree was obtained by collusion and is void. With respect to these questions the presence of the petitioner upon the trial would be imperatively required. If, however, the defendant as a committee appointed by the Supreme Court of New York, stood squarely upon the decree of that Court as justifying his acts and asserted that such decrees while unreversed, constituted a complete defense regardless of the fact whether the petitioner had since recovered his sanity, the question

upon the trial in the Circuit Court would simply relate to the validity of those decrees.

"That question would be principally a question of law. Practically the only facts involved would be as to notice given the petitioner—if notice is necessary—and perhaps as to his residence.

"With respect to these questions, the proof would necessarily be within narrow limits, and the petitioner's testimony, if required, might be taken by deposition. Upon such issues we think the personal presence of the petitioner not so necessary that he should be granted the extraordinary relief prayed for here.

"The order of the Circuit Court is reversed, with costs to the petitioner, and the matter is remanded to the Court with instructions in case the issues remain as at present, to issue a writ of protection to the petitioner prohibiting any person from apprehending or taking him for the purpose of returning him or committing him to an insane asylum while attending the trial of this said action, and for such reasonable time before and after the trial as said Court may determine is necessary for him to come into the State and return, provided that he shall submit himself during such time to the custody of one or more United States Marshals, shall obey their directions and shall pay the expenses of their employment. But that in case all the issues, except with respect to the validity and effect of the said orders of the Supreme Court of New York and of the Justice thereof, be eliminated within sixty days, then said writ of protection do not issue."*

*Said issues remain *in statu quo*.

FROM

APPEAL BRIEF.

IN *Chaloner* against *Sherman*

TO

THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

THE PARALLELS

In the following paper your petitioner has paralleled the rulings of Judge George C. Holt* with the ruling of this Appellate Court, namely; the United States Circuit Court of Appeals for the Second Circuit, handed down May 11th, 1908, entitled *Chanler* against *Sherman* (Circuit Court of Appeals, Second Circuit), 162 Federal Reports, 19.

For the sake of clearness your petitioner describes each pair of parallels thus: First reversal of the Appellate Court by the Court below; second reversal of the Appellate Court by the Court below, etc., etc.

First reversal of the Appellate Court by the Court below:

"Second assignment† That the said Court erred in ruling that the matter of the plaintiff's commitment had nothing to do with the case, and to which ruling of the learned Court, counsel for the plaintiff-in-error duly excepted."

162 Fed. Rep., 19 (p. 40, *supra*):

"But that in case all the issues except with respect to the validity and effect of *the said orders* of the Supreme Court of New York *and of the Justice thereof*, be eliminated within sixty days, then said writ of protection do not issue."‡

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*Of the United States District Court for the Southern District of New York, handed down, February 23, 1912, in *Chaloner against Sherman*.

†In the Assignment of Errors to the United States Circuit Court of Appeals for the Second Circuit.

‡Said issues remain *in statu quo*.

By *"The said order of the Justice thereof"* is meant the commitment proceedings, in which the order for your petitioner's commitment to "Bloomingdale" Insane Asylum was made by Mr. Justice Henry A. Gildersleeve, Justice of the Supreme Court of New York, fully described in 162 Fed. Rep., 19. The following language is from this United States Circuit Court of Appeals, p. 38, *supra*, to-wit:

"But he states a cause of action. He asserts that the orders were wholly void for want of jurisdiction."

Second reversal of the Appellate Court by the Court below:

"F o u r t h assignment: That the said Court erred in sustaining the objection of counsel for the defendant-in-error, Thomas T. Sherman, to the admission in evidence on the part of the plaintiff-in-error of a certain certified copy of the 1897 lunacy proceedings to which ruling of the learned Court, counsel for plaintiff-in-error duly excepted."

162 Fed. Rep., 19 (p. 40, *supra*):

"But that in case all the issues except with respect to the validity and effect of the said orders of the Supreme Court of New York, and of the justice thereof, be eliminated within sixty days, then said writ of protection do not issue."*

By *"The said order of the Justice thereof"* is meant the 1897 Commitment Proceedings, in which the order for your petitioner's commitment to "Bloomingdale" Insane Asylum was made by Mr. Justice Henry A. Gildersleeve aforesaid, fully described in 162 Fed. Rep., 19, under the caption "(1)" p. 34, *supra*.

Further supported by the following language of the learned United States Circuit Court of Appeals, p. 38, *supra*, to-wit: "But he states a cause of action. He asserts that the orders were wholly void for want of jurisdiction."

It is, of course, elementary that fraud is jurisdictional.

The present Princess Amelie Rives Troubetzkoy

*Said issues remain in *statu quo*.

is the former wife of your petitioner, who was his wife until September, 1895.

The said Commitment Proceedings alleged that the petitioner's falsely alleged attack of insanity began in November, 1896.

By "the certificate," First Question under "Fifth," p. 45, *infra*, is meant the Certificate of Lunacy contained in said Commitment Proceedings of 1897.

By "in these proceedings" Second Question, is meant said Commitment Proceedings of 1897.

By "this petition," Third Question under "Fifth," p. 45, *infra*, is meant the petition for the commitment of your petitioner as an insane person contained in said Commitment Proceedings of 1897.

Third reversal of the Appellate Court by the Court below:

"Fifth assignment: That the said Court erred in sustaining the objections of counsel for defendant-in-error, Thomas T. Sherman, to the following questions read from the deposition of Amelie Rives Troubetskoy and put to the said witness by counsel for plaintiff-in-error."

"Q. In the certificate, commencing at line 205, it is stated that there was one previous attack, presumably referring to lunacy; do you know anything about this charge?

Q. In these proceedings, under the statement of facts alleged against the plaintiff, were the following: 1st. That 'Mr. J. A. Chanler has, for several months, while at his home in Virginia, been acting in a very erratic manner'—this refers to his conduct presumably for the several months preceding the trial in New York in 1897? Please state whether or not you have any information concerning this allegation?

Q. It is then alleged in 162 Fed. Rep., 19 (p. 40, *supra*):

"But that in case all the issues except with respect to the validity and effect of the said orders of the Supreme Court of New York and of the justice thereof, be eliminated within sixty days then said writ of protection do not issue."*

By *"The said order of the Justice thereof* is meant the 1897 Commitment Proceedings in which the order for your petitioner's commitment to "Bloomingdale" Insane Asylum was made by Mr. Justice Henry A. Gildersleeve, aforesaid, fully described in 162 Fed. Rep., 19, under the caption "(1)," p. 34, *supra*, further supported by the following language of the learned United States Circuit Court of Appeals, p. 38, *supra*, to-wit: "But he states a cause of action. He asserts that the order was wholly void for want of jurisdiction."

It is, of course, elementary, that fraud is jurisdictional.

*Said issues remain *in statu quo*.

this petition in these proceedings that he has limited himself to a peculiar diet—during the period that you knew and were married to him please state what, if anything, was peculiar about his diet?

Q. During that period the chief or only peculiarity about his diet was the fact that he was a vegetarian?

Q. It is then alleged that 'he gives as a reason for these and other acts that he is inspired by a spirit which directs him.' What do you know of this allegation?

Q. Have you any reason for saying that you can't think of him as having said that?

Q. Did he ever do anything to suggest to you that he had delusions?

Will you please state what was his general temperament — excitable or otherwise?

Q. Is he any more excitable or high strung than the others?

Q. Have you ever heard any rumors that affected his sanity?

Q. It is next alleged that he was confined at Neuilly, near Paris, France, some years ago, for a short time;

please state whether or not this is true?

Q. Will you explain what, if anything, could have been a basis for this charge?

Q. Then you state that he was only at Neuilly once and that time to see a friend?

Q. Was he, or not, a very energetic man?

Q. In this certificate of lunacy they state that he was excited, armed, threatens people, is dangerous; during the period that you knew him did he, or not, ever do anything to indicate that he was dangerous?"

To which ruling of the learned Court counsel for plaintiff-in-error duly excepted.

Fourth reversal of the Appellate Court by the Court below:

"Sixth assignment: That the learned Court erred in ruling that it has nothing to do with the case whatever, 'that she (Amelie Rives Troubetzkoy) was with him at that time (Neuilly, near Paris, France, some years ago, for a short time), and knows all the facts and circumstances and that that is a false statement in the papers that committed him' (to-wit: 'that he was confined at Neuilly, near Paris, France, some years ago for a short time.')."

To which rulings of the learned Court, counsel for the plaintiff-in-error duly excepted.

162 Fed. Rep., 19 (p. 39, *supra*):

"The defendant joins issue upon the fact of sanity after the New York orders were made."

Fifth reversal of the Appellate Court by the Court below:

"Seventh assignment: That the said Court erred in sustaining the objections of counsel for the defendant-in-error, Thomas T. Sherman, to the following questions put by counsel for the plaintiff-in-error, to the witness Pedro N. Piedra."*

"Q. Was Mr. John Armstrong Chaloner at any time when you were serving in that capacity with him, an insane person?

Q. Have you attended upupon other insane men?

Q. How many of them?

Q. What was his physical condition at that time?

Q. Did you have any conversation with the doctor in charge?

Q. About the condition of Mr. Chaloner?

Q. Did you have any conversation with the doctor in charge over there about Mr. Chaloner's being heard or examined anywhere?

Q. Did you observe his actions?"

To which rulings of the learned Court, counsel for the plaintiff-in-error duly excepted.

162 Fed. Rep., 19 (p. 39, *supra*):

"The defendant joins issue upon the fact of sanity after the New York orders were made."

*A trained nurse in the Asylum in charge of your petitioner, *at the time* the 1399 proceedings were had against your petitioner's sanity. (Transcript of Record, pp. 30-33, fols. 57-61.)

Sixth reversal of the Appellate Court by the Court below:

"Eighth assignment: That the said Court erred in sustaining the objection of counsel for the defendant-in-error, Thomas T. Sherman, to the admission of any evidence by the witness, Pedro N. Piedra, concerning any physical or mental condition of Mr. John Armstrong Chaloner at or about the time of his confinement at 'Bloomingdale' Asylum, in May, 1899."

To which rulings of the learned Court, counsel for the plaintiff-in-error duly excepted.

162 Fed. Rep., 19 (p. 39, *supra*):

"The defendant joins issue upon the fact of sanity after the New York orders were made."

Seventh reversal of the Appellate Court by the Court below:

"Ninth assignment: That the said Court erred in ruling that the sanity of the plaintiff-in-error after the New York orders were made, was not in issue."

To which ruling of the learned Court counsel for plaintiff-in-error duly excepted.

162 Fed. Rep., 19 (p. 39, *supra*):

"The defendant joins issue upon the fact of sanity after the New York orders were made."

Furthermore (p. 36, *supra*):

"And he came into that Court with a decree of the Court of the State of which he was a citizen declaring his sanity. We cannot disregard that decree."

(Marked Plaintiff's "Exhibit 7" for identification by the Court below; an exemplified copy of the 1901 Proceedings in the County Court of Albemarle County, Virginia.)

Eighth reversal of the Appellate Court by the Court below:

"Tenth assignment: That the said Court erred in sustaining the objection of counsel for defendant-in-error, Thomas T. Sherman, to the admission in evidence on the part of plaintiff-in-error, of a certain exemplified copy of the record of proceedings in the State of Virginia, entitled 'In the matter of John Armstrong Chanler' and referred to in the evidence as 'The Virginia Decree of Sanity.'"

To which ruling of the learned Court counsel for plaintiff-in-error duly excepted.

162 Fed. Rep., 19 (p. 39, *supra*):

"The defendant joins issue upon the fact of sanity after the New York orders were made."

Furthermore (*et seq., supra*):

"And also sets up that the Virginia decree was obtained by collusion and is void."

Furthermore (p. 36, *supra*):

"And he came into that Court with a decree of the Court of the State of which he was a citizen, declaring his sanity. We cannot disregard that decree."

Ninth reversal of the Appellate Court by the Court below:

"Eleventh assignment: The learned Court erred in sustaining the objection of counsel for the defendant-in-error, Thomas T. Sherman, to the admission of the order, that is the decree of the Virginia Court as to the sanity of the plaintiff-in-error, offered by counsel for the plaintiff-in-error."

To which ruling of the learned Court counsel for plaintiff-in-error duly excepted.

162 Fed. Rep., 19 (p. 39, *supra*):

"The defendant joins issue upon the fact of sanity after the New York orders were made."

Tenth reversal of the Appellate Court by the Court below:

"Twelfth assignment: The learned Court erred in ruling that 'the question of whether he is sane or insane now, or has been at any time in the past, is an abstract question and entirely immaterial to this case.'"

To which ruling of the learned Court counsel for plaintiff-in-error duly excepted.

162 Fed. Rep., 19 (p. 39, *supra*):

"The defendant joins issue upon the fact of sanity after the New York orders were made."

Eleventh reversal of the Appellate Court by the Court below:

"Thirteenth assignment: The said Court erred in ruling 'that the Supreme Court of New York State is the only Court that can supersede the inquisition and restore the money and property to Mr. Chaloner.'"

To which ruling of the learned Court counsel for plaintiff-in-error duly excepted.

Thus the following occurred in the Court below:

"The Court: You offer to prove that the man is sane. Now, I say I will admit no evidence on that subject. You take your exception. You offer to prove that he was declared sane by this Court in Virginia.

"I refuse to take any evidence on that subject, as immaterial, and you take your exception." (Transcript of Record, fol. 110.)

162 Fed. Rep., 19 (p. 37, *supra*):

"The next objection is that the petitioner ought to apply to the Courts of the State of New York for the recision of the orders committing him to the asylum and appointing a committee of his person and property. We have not the slightest doubt that full justice would be done the petitioner should he submit himself to the jurisdiction of the State Courts. But to assume that he was under any obligation to resort to them is to beg the whole question at issue."

Furthermore (p. 35, *supra*):

"The Constitution of the United States vests in its judicial department jurisdiction over controversies between citizens of different States. The petitioner, as a citizen of the State of Virginia, in bringing his said suit in the Circuit Court of the United States was availing himself of a right founded upon this constitutional provision."

Furthermore (p. 38, *supra*):

"The petitioner was given the right, under the laws of the United States, to try his case in the Courts of the United States. He is not permitted to exercise that full right, and the Court in effect is not permitted to exercise its full jurisdiction."

Twelfth reversal of the Appellate Court by the Court below:

"Nineteenth assignment: The learned Court erred in excluding any and all evidence offered or to be offered tending to show the sanity of the plaintiff, and any and all evidence offered or to be offered tending to show that the plaintiff was lured into New York State."

To which ruling of the learned Court counsel for plaintiff-in-error duly excepted.

162 Fed. Rep., 19 (p. 39, *supra*):

"The defendant joins issue upon the fact of sanity after the New York orders were made."

Furthermore: In offset to the fraud and trickery employed by the late Stanford White, at the instigation of, and in collusion with the entire Chanler family, male and female, in luring your petitioner from his then home in Virginia, into the foreign—and, as events proved, hostile—jurisdiction of the State of New York, as offset to said palpable fraud, your petitioner respectfully submits the following language of the learned United States Circuit Court of Appeals, page 38, *supra*, to wit: "But he states a cause of action. He asserts that the orders were wholly void for want of jurisdiction."

It is, of course, elementary, that fraud is jurisdictional.

Thirteenth reversal of the Appellate Court by the Court below:

"Twenty-second assignment: The learned Court erred in excluding the offer of counsel for the plaintiff-in-error to show that the whole proceeding which embodies both records, the 1899 proceeding is void on its face, 'for twenty-odd other reasons which involve due process of law.'"

To which ruling of the learned Court counsel for plaintiff-in-error duly excepted.

162 Fed. Rep., 19 (p. 38, *supra*):

"But he states a cause of action. He asserts that the orders were wholly void for want of jurisdiction. And if they were void they were of no effect, and the petitioner had a right to assert their invalidity in any Court."

This Brief contains nineteen points of law, the four following of which are basic, to wit: 9, 11, 12, 17, and will be found under caption, "The Nineteen Points of Law": *infra*, entitled, respectively: Notice; Constitutional Necessity for Opportunity to Appear and be Heard; Illegality of Trials *in absentia;* and Insanity Judgment not a continuing one.

Fourteenth reversal of the Appellate Court by the Court below:

"Twenty-third assignment: The learned Court erred in excluding all the evidence to show that all the proceedings against the plaintiff-in-error were by virtue of fraud and conspiracy."

To which ruling of the learned Court counsel for plaintiff-in-error duly excepted.

162 Fed. Rep., 19 (p. 38, *supra*):

"But he states a cause of action. He asserts that the orders were wholly void for want of jurisdiction. And if they were void, they were of no effect, and the petitioner had a right to assert their invalidity in any Court."

It is, of course, elementary, that fraud is jurisdictional.

Fifteenth reversal of the Appellate Court by the Court below:

"Twenty-fourth assignment: The learned Court erred in sustaining the objection of counsel for the defendant-in-error to the following question read from the deposition of John B. Dickinson, M. D., and put to the witness by counsel for the plaintiff-in-error:

"Q. Please state what is the present color of the plaintiff's eyes?"

To which ruling of the learned Court counsel for plaintiff-in-error duly excepted."

162 Fed. Rep., 19 (p. 38, *supra*):

"But he states a cause of action. He asserts that the orders were wholly void for want of jurisdiction."

It is, of course, elementary that fraud is jurisdictional.

Sixteenth reversal of the Appellate Court by the Court below:

"Twenty-fifth assignment: The learned Court erred in excluding evidence to show that the evidence of the alienists upon which the plaintiff-in-error was committed, was false and perjurious and fraudulent bearing upon the *bona fides* and that it deceived and misled the Court and in ruling that said evidence should have been given on the trial of the case (meaning on the trial of the New York State proceedings)."

To which ruling of the learned Court counsel for plaintiff-in-error duly excepted.

162 Fed. Rep., 19 (p. 38, *supra*):

"But he states a cause of action. He asserts that the orders were wholly void for want of jurisdiction. And if they were void they were of no effect, and the petitioner had a right to assert their invalidity in any Court."

It is, of course, elementary, that fraud is jurisdictional.

Seventeenth reversal of the Appellate Court by the Court below:

"Twenty-sixth assignment: The learned Court erred in ruling that the Court could not try over there, the question which was tried before the Sheriff's Jury.*

To which ruling of the learned Court counsel for plaintiff-in-error duly excepted."

162 Fed. Rep., 19 (p. 37, *supra*):

"The next objection is that the petitioner ought to apply to the Courts of the State of New York for the recision of the orders committing him to the asylum and appointing a committee of his person and property. We have not the slightest doubt that full justice would be done the petitioner should he submit himself to the jurisdiction of the State Courts. But to assume that he was under any obligation to resort to them is to beg the whole question at issue."

Furthermore (p. 35, *supra*):

"The Constitution of the United States vests in its judicial department jurisdiction over controversies between citizens of different States. The petitioner as a citizen of the State of Virginia in bringing his said suit in the Circuit Court of the United States was availing himself of a right founded upon this constitutional provision."

Furthermore (p. 38, *supra*):

"The petitioner was given

*The 1899 Proceedings (Transcript of Record, pp. 66-146, fols. 126-279).

the right under the laws of the United States, to try his case in the Courts of the United States. He is not permitted to exercise that full right, and the Court, in effect, is not permitted to exercise its full jurisdiction."

Eighteenth reversal of the Appellate Court by the Court below:

"Twenty-seventh assignment: The learned Court erred in excluding the testimony of Winthrop Astor Chanler, taken by the defense in this case, tending to show fraud in the commitment of the plaintiff-in-error, and tending to show that the plaintiff-in-error was lured into the jurisdiction of the State of New York.

To which ruling of the learned Court counsel for plaintiff-in-error duly excepted."

162 Fed. Rep., 19 (p. 38, *supra*):

"But he states a cause of action. He asserts that the orders were wholly void for want of jurisdiction."

It is, of course, elementary, that fraud is jurisdictional.

Nineteenth reversal of the Appellate Court by the Court below:

"Twenty-eighth assignment: The learned Court erred in sustaining the objection of counsel for defendant-in-error to the following question read from the deposition of Winthrop Astor Chanler, and put to said witness by counsel for the plaintiff-in-error.

'Q. How long is it that you have been estranged?'

To which ruling of the learned Court counsel for plaintiff-in-error duly excepted."

162 Fed. Rep., 19 (p. 38, *supra*):

"But he states a cause of action. He asserts that the orders were wholly void for want of jurisdiction."

It is, of course, elementary, that fraud is jurisdictional.

Twentieth reversal of the Appellate Court by the Court below:

"Twenty-ninth assignment: The learned Court erred in sustaining the objection of the counsel for the defendant-in-error to the following question read from the deposition of Winthrop Astor Chanler, and put to said witness by the counsel for the plaintiff-in-error.

'Q. You have had quarrels with your brother, haven't you?' "

To which ruling of the learned Court counsel for plaintiff-in-error duly excepted.

162 Fed. Rep., 19 (p. 38, *supra*):

"But he states a cause of action. He asserts that the orders were wholly void for want of jurisdiction."

It is, of course, elementary, that fraud is jurisdictional.

Twenty-first reversal of the Appellate Court by the Court below:

"Thirtieth assignment: The learned Court erred in sustaining the objections of counsel for the defendant-in-error to the following questions read from the deposition of Winthrop Astor Chanler, and put to said witness by counsel for the plaintiff-in-error.

'Q. Was there an altercation between you at that meeting at which he kicked you out, as you say?'

Q. Well, wasn't there some quarrel between you with reference to a suggestion that plaintiff made about an examination of the books of your father's estate?

Q. And this was about the time of this meeting?

Q. Well, now, will you tell us what you remember of that?

Q. Lewis is the other petitioner (L. S. Chanler)?

Q. Wasn't there really a good deal of ill feeling between all the members of your family on the one hand, and John Armstrong Chanler on the other hand, ever since his marriage?

Q. Wasn't there considerable complaint among your brothers and sisters that they were not invited to his wedding?

162 Fed. Rep., 19 (p. 38, *supra*):

"But he states a cause of action. He asserts that the orders were wholly void for want of jurisdiction."

It is, of course, elementary, that fraud is jurisdictional.

The fraud in the above is further heightened and accentuated by the fact that Winthrop Astor Chanler, and the two other petitioners, namely, Lewis Stuyvesant Chanler and Arthur Astor Carey, had never set foot in your petitioner's then home, "The Merry Mills," Cobham, Va., where said falsely alleged actions by your petitioner were *sworn to have occurred.* N. B. *As of their own knowledge,* that the said three petitioners *witnessed* the said falsely alleged actions, *and heard* the said falsely alleged sayings, falsely alleged to have been done and said by your petitioner. Said Winthrop Astor Chanler swore upon cross-examination *that he had never visited a certain place wherein they had previously sworn that they had seen and heard certain things.*

Q. Well, how many of you felt that way?

Q. Then you owe your presidency to the votes given by Mr. Sherman as committee?

Q. Did he tell you what he raised this money for?

Q. Well, did you criticise his raising money to buy out your brother Robert?

Q. Under those circumstances why didn't you send Lewis Chanler down there to investigate your brother's condition of health, instead of going there yourself — wasn't Lewis more friendly to him than you?

Q. So that Mr. Carey had not seen your brother for at least two years prior to the time of the commitment?

Q. Now, why I ask you that is, because you probably remember that in your application for your brother's commitment, you and Mr. Lewis Chanler and Mr. Carey signed a petition in which you state that 'Mr. John A. Chanler has, for several months, while at his home in Virginia, been acting in a very erratic manner. He has limited himself to a peculiar diet; has burned his hands by carrying hot coals in them; he has devised many peculiar schemes such as a roulette scheme to beat

Monte Carlo, and he has given as a reason for these and other acts that he is inspired by a spirit which directs him; for the past three weeks entirely he has constantly talked of these delusions, has neglected his health, has injured his person and has been at times wildly excited.' And then all three of you sign an affidavit stating that you knew the contents of the foregoing petition, and that the same was true of your own knowledge, except as to matters therein stated to be alleged on information and belief, and there are no matters in the petition which are stated on information and belief; now, how did you come to make that affidavit that you knew these facts of your own knowledge?

Q. And that the statements contained in this petition were very solemn statements?

Q. And that you considered very carefully this statement, didn't you, 'Mr. J. A. Chanler has, for several months, while at his home in Virginia, been acting in a very erratic manner?'

Q. And you know what home means?"

To which ruling of the learned Court counsel for plaintiff-in-error duly excepted.

Twenty-second reversal of the Appellate Court by the Court below:

"Thirty-first assignment: The learned Court erred in excluding the offer of counsel for the plaintiff-in-error to put the whole deposition of Winthrop Astor Chanler in evidence.

To which ruling of the learned Court counsel for plaintiff-in-error duly excepted."

162 Fed. Rep., 19 (p. 38, *supra*):

"But he states a cause of action. He asserts that the orders were wholly void for want of jurisdiction."

It is, of course, elementary, that fraud is jurisdictional.

Twenty-third reversal of the Appellate Court by the Court below:

"Thirty-second assignment: The learned Court erred in excluding evidence to prove lack of jurisdiction, conspiracy, fraud, want of due process of law."

"and to prove the sanity and competency of the plaintiff-in-error"

"and to prove that he was lured into the State of New York;"

"and to prove that the plaintiff-in-error was unable through physical disability to attend the 1899 proceedings; that said proceedings were had *in absentia*, that there was no real contest, and that there was fraud."

To which ruling of the learned Court counsel for plaintiff-in-error duly excepted.

162 Fed. Rep., 19 (p. 38, *supra*):

"But he states a cause of action. He asserts that the orders were wholly void for want of jurisdiction. And if they were void, they were of no effect, and the petitioner had a right to assert their invalidity in any Court."

Supported by the fact that *conspiracy and fraud are jurisdictional.*

(p. 39, *supra*):

"The defendant joins issue upon the fact of sanity after the New York orders were made."

(p. 38, *supra*):

"But he states a cause of action. He asserts that the orders were wholly void for want of jurisdiction."

It is, of course, elementary, that fraud is jurisdictional.

Twenty-fourth reversal of the Appellate Court by the Court below:

"Thirty-third assignment. The learned Court erred in sustaining the objection of counsel for the defendant-in-error to the offer made by counsel for plaintiff-in-error of the letter* from John Armstrong Chaloner to Hon. Micajah Woods, dated July 3, 1897."

To which ruling of the learned Court counsel for plaintiff-in-error duly excepted.

162 Fed. Rep., 19 (p. 39, *supra*):

"The defendant joins issue upon the fact of sanity after the New York orders were made."

Furthermore (p. 38, *supra*):

"But he states a cause of action. He asserts that the orders were wholly void for want of jurisdiction."

It is, of course, elementary, that fraud is jurisdictional.

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*Written by your petitioner while in captivity, of 5,000 words or more, now on file in said Judge George C. Holt's Court, in New York, proving the plot—since fully established on the said evidence of the said three petitioners, Messrs. Winthrop Astor Chanler, Arthur Astor Carey and ex-Lieutenant-Governor Lewis Stuyvesant Chanler—against your petitioner's liberty as well as his sanity, which letter was written within four months of the very inception of your petitioner's captivity, which lasted nearly four years thereafter, and which was intended by petitioner's family to last for life. But your petitioner escaped at the end of said four years, and thus frustrated the plot of his loving brothers and sisters to seize your petitioner's property of a million and a half or more, which letter fully establishes the plaintiff-in-error's sanity at the time of his incarceration; on the strength of Mr. Justice Harlan's opinion in the Runk case, *infra*.

Twenty-fifth reversal of the Appellate Court by the Court below:

"Thirty-fourth assignment: That the said Court erred in sustaining the objection of counsel for the defendant-in-error to the following question read from the deposition of John Armstrong Chaloner, and put to said witness by counsel for plaintiff-in-error.

'Q. Was the work of building up the Town of Roanoke Rapids completed under your supervision in 1896?'*

To which ruling of the learned Court counsel for plaintiff-in-error duly excepted."

162 Fed. Rep., 19 (p. 39, *supra*):

"The defendant joins issue upon the fact of sanity after the New York orders were made."

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*The allegation in the Commitment Papers being that your petitioner's falsely-alleged attack of insanity began in November, 1896. During which time your petitioner was the "Resident Director," of the Board of Directors, of the Corporation building said manufacturing town—as the Court records prove (Transcript of Record, pp. 36-37, 51-52, fols. 69, 97-98).

UNPARALLELED ASSIGNMENTS

Your petitioner respectfully submits that as no *exact* parallels existed between the rulings of the Honorable Judge George C. Holt in the Court below, and the decision of the Appellate Court, to wit, this Honorable Court, as to assignments of error, numbers 1, 3, 14, 15, 16, 17, 18, 20, 21, 35, 36, 37 and 38, your petitioner respectfully makes the following comments on said assignments of error, to wit:

"*First.*—That the learned United States District Court for the Southern District of New York erred in sustaining the objection of counsel for defendant-in-error, Thomas T. Sherman, to the following question read from the deposition of Amelie Rives Troubetzkoy and put to the said witness by counsel for plaintiff-in-error:

> "Q. What was the condition of the plaintiff's health during his marriage to you?

"To which ruling of the learned Court counsel for the plaintiff-in-error duly excepted."

The condition of plaintiff's health while married to his former wife had an important bearing on plaintiff's sanity, and this Honorable Court declared, in 162 Fed. Rep., 19: "The defendant joins issue upon the fact of sanity after the New York orders were made."

"*Third.*—That the said Court erred in sustaining the objections of counsel for defendant-in-error, Thomas T. Sherman, to the following questions read from the depo-

sition of Amelie Rives Troubetzboy and put to said witness by counsel for plaintiff-in-error.

"Q. Please state what, if any, sickness he had during that period?

"Q. What was the condition of his health generally (Transcript of Record, p. 26, fol. 49)?

"To which rulings of the learned Court counsel for plaintiff-in-error duly excepted."

The condition of plaintiff's health while married to his former wife had an important bearing on plaintiff's sanity, and this Honorable Court declared, in 162 Fed. Rep., 19: "The defendant joins issue upon the fact of sanity after the New York orders were made."

"Fourteenth.—The said Court erred in holding that as a matter of law, that if the plaintiff, John Armstrong Chaloner, was in fact in the city of New York when the proceeding for the appointment of a committee was begun, the Supreme Court had jurisdiction whether he resided there or did not reside there.

"To which ruling of the learned Court counsel for the plaintiff-in-error duly excepted."

Thaw case in New Hampshire.* Fraud, trickery and

*Thaw Case.

A parallel case is found in New York against H. K. Thaw, in New Hampshire. Thaw escaped from Matteawan into New Hampshire and was there arrested and held by the State authorities, and the Governor of New Hampshire was about to turn him over to the New York authorities on extradition, when said Thaw's lawyers stepped in, procured an injunction from the Federal District Court and prohibited the Governor of New Hampshire from turning him over to the New York authorities. The Federal Court then took said Thaw into its custody and appointed a Commission in Lunacy to determine his sanity and whether or not it would be dangerous to grant him bail. The said Commission found said Thaw sane and safe to receive bail.

luring cases. Federal authorities as well, in Trial Brief.

"Fifteenth.—The said Court erred in holding as a matter of law that 'It is not necessary to discuss it (that he was lured into the State for the purpose of being thrown into "Bloomingdale"), Mr. Sherman is not responsible for the acts of those who put him in "Bloomingdale."'

"To which ruling of the learned Court counsel for the plaintiff-in-error duly excepted."

Said Sherman holds through their acts—it was through their acts alone that the Supreme Court of New York gained custody over him; and said Sherman is the appointee of the Supreme Court of New York.

"Sixteenth.—That the said Court erred in holding as a matter of law that it is immaterial whether or not the plaintiff was lured into the jurisdiction of the State of New York for the purpose of taking commitment proceedings against him, and in holding that thereupon a proper proceeding was begun in the Supreme Court which resulted in a judgment that the plaintiff is insane, and in holding that that judgment is perfectly valid, no matter how the plaintiff, John Armstrong Chaloner, was brought into the jurisdiction of the Court.

"To which ruling of the learned Court counsel for the plaintiff-in-error duly excepted."

The learned Court did not differentiate between an *alleged* and *adjudicated lunatic.* With an adjudicated lunatic, trickery, fraud, and luring are permissible, but not so with an *alleged* lunatic who, *ipso facto,* has all the rights thrown around any other non-criminal citizen (U. S. *v.* Throckmorton, *infra*).

"Fraud vitiates everything, and a judgment equally with a contract, that is, a judgment obtained directly by fraud."

"*Seventeenth.*—The learned Court erred in holding as a matter of law that the judgment rendered in the 1899 proceedings *determined* the status of the plaintiff, John Armstrong Chaloner, and *determined* the condition of the plaintiff's sanity or insanity, and that such determination is a fact which does not depend on how the plaintiff was brought within the reach of the Court, as determining the question of sanity or insanity.

"To which ruling of the learned Court counsel for the plaintiff-in-error duly excepted."

Only if properly brought before the Court, which was not the case. Fraud and trickery and luring cases.

"Insanity judgment not necessarily permanent" (162 Fed. Rep., 19).

"*Eighteenth.*—That the learned Court erred in holding as a matter of law that no matter how John Armstrong Chaloner, the plaintiff, came to any particular place, or how he was brought or by what fraudulent means he was brought there, if it was *claimed* that he was insane or had lost his reason, that the Court had jurisdiction over his person and property.

"To which ruling of the learned Court counsel for the plaintiff-in-error duly excepted."

See Thaw Case in New Hampshire, footnote, p. 74, *supra*.

The learned Court did not differentiate between an alleged and adjudicated lunatic. With an adjudicated

lunatic trickery, fraud and luring are permissible, but not so with an alleged lunatic who, *ipso facto*, has all the rights thrown around any other non-criminal citizen. U. S. *v.* Throckmorton, *infra*.

"*Twentieth.*—The learned Court erred in ruling as a matter of law that 'the question that he was a resident of another State, so far as the validity of the proceedings to have him adjudicated a lunatic is concerned, is in my opinion entirely immaterial.'

"To which ruling of the learned Court counsel for the plaintiff-in-error duly excepted."

The plaintiff's constitutional right to go into a Federal Court was denied him by keeping him away from counsel, as shown by the letter to Captain Micajah Woods written by plaintiff within four months of his incarceration, July 3rd, 1897. 162 Fed. Rep., 19.

"*Twenty-first.*—The learned Court erred in excluding all the evidence offered to show that John Armstrong Chaloner was not at the time of his commitment to 'Bloomingdale,' a resident of New York State.

"To which ruling of the learned Court counsel for the plaintiff-in-error duly excepted."

Fraud, trickery and luring. Thaw New Hampshire Case. (See footnote, p. 74, *supra*.)

"*Thirty-fifth.*—That the said Court erred in sustaining the objection of counsel for the defendant-in-error, and in striking out the answer thereto, read from the deposition of John Armstrong Chaloner, and put to said witness by counsel for plaintiff-in-error.

"Q. What was the amount of your investment?

"A. The amount was actually in cash $13,000.00, the balance which was on interest was $12,000.00, the interest being $720.00 a year.

"To which ruling of the learned Court counsel for the plaintiff-in-error duly excepted."

The question and the answer thereto were offered to prove the sanity of the plaintiff through his good business judgment in a large real estate investment, described on pages 38-39 of the Transcript of Record beginning at folio 71, line 5, etc.

"The defendant joins issue upon the fact of sanity after the New York orders were made." 162 Fed. Rep., 19.

"Thirty-sixth.—That the said Court erred in holding as a matter of law that the defendant, Thomas T. Sherman, is not responsible for the acts of those who put the plaintiff, John Armstrong Chaloner, in the 'Bloomingdale' Asylum nor in any way accountable therefor.

"To which ruling of the learned Court counsel for the plaintiff-in-error duly excepted."

Said Sherman holds through their acts—it was through their acts alone that the Supreme Court of New York gained custody over him, and said Sherman is the appointee of the Supreme Court of New York.

"Thirty-seventh.—That the learned Court erred in holding as a matter of law that testimony going to prove that John Armstrong Chaloner was not at the time of his commitment to 'Bloomingdale' Asylum a resident of the State of New York, so far as the validity of pro-

ceedings to adjudicate him a lunatic was concerned is immaterial, and that the Court erred in sustaining the objections of counsel for the defendant-in-error to the admission in evidence on the part of the plaintiff-in-error of all testimony as to the residence of the plaintiff-in-error in another State at the time of his commitment to 'Bloomingdale' Asylum.

"To which ruling of the learned Court counsel for plaintiff-in-error duly excepted."

The plaintiff's constitutional right to go into a Federal Court was denied him by keeping him away from counsel, as shown by the letter to Captain Micajah Woods, written by plaintiff within four months of his incarceration, July 3rd, 1897. 162 Fed. Rep., 19.

"*Thirty-eighth.*—That the learned Court erred in directing a verdict for the defendant-in-error upon the trial herein, and to which ruling the plaintiff-in-error excepted.

"If the learned Trial Court erred in the foregoing 37 points, it follows that it erred in Point 38."

ANALYSIS OF MAYER, J'S., OPINION IN APPEAL OF *CHALONER* against *SHERMAN*

(A) Mayer, J., says: "Known as Bloomingdale Insane Asylum"—Transcript of Record, p. 185, fol. 363.

This is inexact. Its legal name is: "The Society of the New York Hospital." This irregularity is gone into in Transcript of Record, p. 172, fols. 337-338. It also forms Point 10 of the Nineteen Points in the Trial Brief—the original printed Brief and Appendix, written by plaintiff-in-error in 1902-1904, and published by plaintiff-in-error in 1905.*

(B) Mayer, J., says: "This order was in accordance with the Insanity Law of New York (Laws of 1896, chapter 545), which permits a commitment without notice, and that statute has been held to be constitutional," p. 185, fol. 363.

Lack of notice is specifically declared unconstitutional in *Windsor* v. *McVeigh*, 93 U. S., supported by *Simon* v. *Craft*, 182 U. S., in which Chief Justice White says: *"The essential elements of due process of law are notice and opportunity to defend."* Supported by the following cases, *infra*. *Matter of Georgiana G. R. Wendel*—King's Special Term, 1900. Marean, J., said: "She had no notice of the application, either personal or by substituted service—and there was no hearing at which she was either present or represented by any other per-

*In evidence. See Stipulation as to Exhibits. Transcript of Record, p. 154, fol. 301. "It is hereby stipulated and agreed that said Depositions, plaintiff's Brief and Appendix and all Exhibits marked for identification * * * may be and hereby are treated upon the appeal herein as model exhibits." Said Brief will in future be described herein as plaintiff-in-error's Trial Brief.

son. She had been finally adjudged insane, and committed to perpetual restraint, without notice or hearing. She is deprived of her liberty, therefore, without due process of law. The Insanity Law, so far as it permits this, is in violation of the Constitution. *People ex rel. Elizabeth Ordway* v. *St. Saviour's Asylum*, 34 Ap. Div. The Court said: "No matter what may be the ostensible or real purpose in restraining a person of his liberty, whether it is to punish—or to protect the person—such restraint cannot be made permanent or of long continuance (plaintiff-in-error's restraint was from 1897—March 13th—to May 1st, 1899—without notice—and from then till his escape Thanksgiving Eve, 1900, WITHOUT OPPORTUNITY TO DEFEND) unless by due process of law. A hearing or an opportunity to be heard is absolutely essential. We cannot conceive of due process of law without this. *What reason exists why a person alleged to be incompetent or dangerous should not have an opportunity * * * to contest the charge as much as a person accused of crime?* The *rights of one are* as sacred and inviolable as the other. Shall *ex parte* proof that would only avail *to hold an alleged criminal for trial* be regarded as conclusive proof against a supposed unfortunate? Acts of the Legislature which go beyond the allowance of *temporary confinement* and restraint *until trial or hearing* may be had, and the accused person have this day in court in some way customary or adequate to enable him to present his case, are invalid exercises of legislative powers. It surely cannot be said that the procedure authorized by the act under which this relator was committed and which created the wrong is due process of law simply because the Legislature chose to authorize that procedure."

(C) Mayer, J., continues: "It was further ordered that the commission be executed in the County of New York," p. 185, fol. 364.

Chaloner being in Westchester County, 20 miles away, and on the oath of Dr. Samuel B. Lyon, Medical superintendent of "Bloomingdale" in bed at the time and for three weeks previous thereto, complaining of trouble with his spine and knee. Dr. Lyon on the stand in the 1899 Proceedings: p. 114, fol. 225, *ibid.* "Q. When did you last see John Armstrong Chaloner? A. Last Wednesday or Thursday, about three days ago. * * * I asked him if he wanted to be present here; he said he was physically unable to be present on account of pain in his spine—and he also said his knee was affected in the same way, and he would be unable to come." p. 115, fols. 225-226. "Q. Did that infirmity really exist or was it a delusion? A. I think he has pain in his spine,—he did not feel as if he could stand up, he has kept his bed for over three weeks, at least." p. 118, fol. 231. "I gave him the parole of our grounds on his honour—he is a very honourable man; he went out by himself an hour or so—and then he ceased to go out because he was physically unable."

The only inference from the above Proceeding—the serving of the summons at such a time and at such a place—is that Chaloner's family—who were kept informed by Dr. Lyon of his condition from day to day—chose such a time and such a place—20 miles away from where he lay bed-ridden *and had been* for three weeks prior to the receipt of the summons. Dr. Lyon on the stand, p. 115, fol. 226: "A. He has kept his bed for over three weeks at least." And Chaloner, therefore, could *not* have taken to his bed as a malingerer, to sham sickness to avoid being present, since there was *no possible way* of his knowing of the plans of his enemies before-hand, he not being a prophet—Chaloner's family chose this time when they *knew* he was incapacitated from leaving his cell and had been for some three weeks, in order to set Proceedings 20 miles off. *Otherwise*, if

they had meant fairly by him, they would have set the trial in the Court House of Westchester County within a short mile of his cell, at White Plains. They wanting to at least *attempt* to cure the gross illegality of incarceration for two years without notice—attempt to, at least—by a *bogus* Proceedings in which notice would be served on him, STRIPT, HOWEVER, OF ALL OPPORTUNITY TO BE HEARD—which the United States Supreme Court in *Windsor* v. *McVeigh*, 93 U. S., denounces as a *sham and deception*, and adds that if notice is not to be followed by opportunity to appear and be heard, *the notice had better be omitted altogether*. For these bogus Proceedings would enable a Judge—like the learned Julius M. Mayer—to say in his opinion, aforesaid, p. 188, fol. 367: "The record shows that scrupulous care was exercised in serving the various notices of motions and proceedings on Chaloner." "Scrupulous care was exercised in serving the various notices" on Chaloner because scrupulous care had been exercised by the Chanler conspirators and their allied doctors and lawyers *to ascertain that Chaloner was physically incapacitated from availing himself of the notice. It was like breaking a man's leg and then serving notice on him that he must come to court for redress while suffering with a broken leg and unable to walk; that otherwise he would lose his day in court. No such "scrupulous care" was exercised in the Commitment Proceedings, March*, 1897, *when Chaloner was well, and able to avail himself of same.* The Chanler family well knew that Chaloner was of athletic build and given to much exercise. They knew that this was the first illness he had had in all the two years he had been confined in "Bloomingdale," and that it behooved them therefore—if they intended to *attempt* to cure the 1897 Proceedings by a bogus *apparent* fair trial—to be sharp about it; as Chal-

oner might recover and then would be surely on hand at any cost to put out his side of the case.

(D) Mayer, J., continues: "It was further ordered that the Commissioners might, in their discretion, *dispense with Chaloner's attendance.*" p. 185, fol. 364.

Highly suspicious proviso, considering the foul play shrouding these entire Chanler proceedings, we respectfully submit.

(E) Mayer, J., continues: "The Medical Superintendent testified that Chaloner said he was physically unable to be present. But the jury stated that they did not desire his production—thereafter the Medical Superintendent was again called and stated that to produce Chaloner would temporarily do him harm mentally and that Chaloner 'said he did not want to come down.' Dr. Carlos F. Macdonald then testified that to call Chaloner would 'tend to aggravate his mental condition." p. 186, fol. 364.

It was only upon being recalled that Dr. Samuel B. Lyon vouchsafed the remark that Chaloner *"said he did not want to come down."* When he *first* took the stand, Dr. Lyon said Chaloner merely stated the bare *physical* reason which prevented his being present (*supra*). "The Medical Superintendent testified that Chaloner said he was physically unable to be present." Also vide (C), *supra.* In this particular, Chaloner's examination of the fluctuation of the testimony of Drs. Lyon (Appendix, pp. 717-721), Flint and Macdonald (*ibid.*, pp. 728-769) *re* his ability to be present, makes interesting reading rather, we respectfully submit.

(F) Mayer, J., continues: "Chaloner claims that * * * he was lured into the State of New York in 1897 and was committed improperly without notice," p. 186, fol. 365.

The learned Judge then proceeds to tabulate all Chal-

oner's claims *re* the invalidity of the 1897 Proceedings *but* the learned Judge *sinks the most important claim re the res gestae* which was that the entire testimony *re* Chaloner's alleged insanity was by *interested parties*, and *perjured on the evidence* and *admitted under cross-examination at that*, pp. 53-54, fols. 101-102.

Furthermore. (F) "That *re* the inquiry *de lunatico* in 1899—all the Proceedings were void, among other reasons because he was not present before the Commissioners and the Sheriff's Jury; that he always was and now is sane and was so declared in 1901 by a Court of competent jurisdiction in Virginia and that, therefore, the appointment of Sherman was void."

Once more the learned Judge while appearing to sum up the allegations of Chaloner against the validity of the 1899 Proceedings *sinks the most important allegation of all*, namely, because his constitutional right to an opportunity to be heard in his own defense was denied him, from the fact of his trouble with his spine and knee. *Windsor* v. *McVeigh*, 93 U. S., and *Simon* v. *Craft*, 182 U. S.

(G) Mayer, J., continues: "Insanity is, of course, not necessarily a continuing condition, but the trial court was right in holding that Chaloner's present condition never became an issue in the case," p. 186, fol. 365.

This reverses this Court by its own members—*Chanler against Sherman*, 162 Fed. Rep., *held the precise contrary*. See *"Seventh* reversal of the Appellate Court by the Court below," The Parallels, *supra*. *First* reversal of the United States Circuit Court of Appeals by itself.

(H) Mayer, J., continues: "The trial court was likewise right in excluding testimony to show the mental condition of Chaloner in 1899 for that issue could not

be litigated in this action and was solely for the New York Courts," p. 187, fol. 365.

This reverses this Court by its own members a second time. *Chanler against Sherman,* 162 Fed. Rep., held the precise contrary. See *"Sixth* reversal of the Appellate Court by the Court below." The Parallels, *supra.* Second reversal of the United States Circuit Court of Appeals by itself.

(I) Mayer, J., continues: "Whether or not in 1897 plaintiff was lured into this State was immaterial, because defendant was appointed not by virtue of the 1897 Proceedings, but as successor to the Committee appointed in the 1899 Proceedings," p. 187, fol. 365.

But the fraud and irregularity of the 1897 *Proceedings tainted those of* 1899. In fact—and of record—they were part and parcel of the same identical Proceedings, as a glance at the Transcript of Record will show. The 1897 Proceedings were specifically joined to and made art and part of the 1899 Proceedings. *AS MUCH AS A FOUNDATION FORMS PART OF AN EDIFICE SO MUCH DO THE* 1897 *PROCEEDINGS FORM PART OF THOSE OF* 1899. The 1899 Proceedings DEPEND UPON AND CARRY ON those of 1897. Lastly had it not been for the 1897 Proceedings there could have been no Proceedings in 1899—it was the 1897 Proceedings that made those of 1899 possible—that lured the plaintiff into the State of New York. *The* 1897 *Proceedings also* were the *cause* of the illness which prevented his presence at those of 1899—the nervous shock induced by *two years* illegal confinement in a Madhouse.

(J) Mayer, J., continues: "Even assuming that plaintiff was at all times a resident of Virginia, the question of his residence was one of the facts in issue in the 1899 Proceedings and having been there adjudi-

cated cannot be collaterally attacked," p. 187, fols. 365, 366.

Except for fraud. It was so conclusively proved that Chaloner was a resident of Virginia that in the record of the trial before the learned Judge Holt in February, 1912, THE COURT FROM THE BENCH OBSERVED THAT IT WAS CONCLUDED THAT CHALONER'S RESIDENCE ALWAYS HAD BEEN IN VIRGINIA. (Transcript of Record, pp. 38-42, fols. 73-81.)

In short the evidence at said trial was overwhelming thereanent. *And yet it was sworn in the* 1899 *Proceedings that Chaloner's residence was in New York,* as it was likewise so sworn in the 1897 Proceedings. Hear Mr. Justice Miller of the United States Supreme Court in *United States* v. *Throckmorton,* 61 U. S., on the subject of collateral attack through the avenue of fraud: "There is no question of the general doctrine that fraud vitiates the most solemn contracts, documents and even judgments. In cases where, by reason of something done by the successful party to a suit, there was, in fact, no adversary trial or decision of the issue in the case—these and similar cases which show that there has never been a real contest in the trial or hearing of the case, are reasons for which a new suit may be sustained to set aside and annul the former judgment or decree, and open the case for a new and fair hearing. *In all these cases and in many others which have been examined, relief has been granted, on the ground that, by some fraud practiced directly upon the party seeking relief against the judgment or decree, that party has been prevented from presenting all of his case to the Court.*" By the "fraud practiced directly upon" Chaloner as shown *supra*—he had "been prevented from presenting all of his case to the Court" among other things the fact that his residence was Virginia and *not*—as sworn to by the other side in 1897 and 1899—New York.

(K) Mayer, J., continues: "But, in any event the New York Court had jurisdiction in view of the fact that plaintiff was within the State and had property therein when the Proceedings were commenced," p. 187, fol. 366.

But not when enticed within the confines of the State by fraud. Carpenter v. *Spooner* (N. Y. Sup. Ct. Rep.), 717 *infra:* "This Court will not sanction any attempt by fraud or misrepresentation to bring a party within its jurisdiction." Again in the *Olean Street Railway Company* v. *Fairmount Construction Company,* 55 App. Div. 1900, p. 292 *infra.* Held "service secured by such means should not be permitted to stand. For the Court will not sanction any attempt by fraud or misrepresentation to bring a party within its jurisdiction." *Wyckoff* v. *Packard,* 20 App. N. C. 420 (N. Y. City Court Special Term 1887, *infra.*) Held per Ehrlich, J.: "The decisions are uniform that such deceit vitiates the source of legal process, *but if there were no precedent exactly in point the Court would not hesitate to make one of the case at bar." Snelling* v. *Watrous,* 2 Paige (Ct.) 314 (1830) *infra:* "Where a party has not in fact been guilty of any crime, this Court will not permit the complainant to resort to any unfair and inequitable method to enforce the process of attachment." *Baker* v. *Wales,* 14 App. Pr. Rep. (N. Y.), 331 N. Y. Sup. Ct. 1873, Gen. Term *infra,* Freedman, J., said "that deceit had been used for the purpose of bringing defendant within the jurisdiction of this Court —the service of the summons was therefore properly vacated and set aside." *Lagrave's Case, ib.* p. 333 (Supreme Ct. Specl. Term, 1873) *infra,* held: "a party brought within the jurisdiction by requisition on a criminal charge is not liable to arrest in a civil suit brought by those at whose instance the criminal Pro-

ceeding was started." *Metcalf* v. *Clark*, 41 Barb. 45 (1864) per Bocks, J., *infra:* "He was enticed within the jurisdiction of the Court for a purpose to which the Court will not give its sanction—the Proceeding was a trick."

"Analogy holds good in law," is a maxim of the law. If Chaloner had property in China, and had been enticed there by interested parties who wished to get him out of the way and obtain control of that property by means of a Chinese Commission-in-Lunacy; and upon arrival certain Chinamen had sworn that Chaloner was a resident of China—though in fact of Virginia and that they had seen him do certain insane things in Virginia—*where it afterwards developed none of the Chinamen had ever been*—whereupon Chaloner was sentenced for life to a Chinese Madhouse; and his Chinese property put into the hands of a Chinese Committee—how *long would such a state of things obtain, once the United States Government got wind of the situation?* So far as residence is concerned Virginia is as foreign to New York as China, and the analogy set forth above regarding China is precisely what took place in New York.

(L) Mayer, J., continues: "The venue of a Proceeding is entirely within the control of a State in respect of subject-matter over which a State Court has sole jurisdiction, and the fact that Chaloner had real property in New York County was enough to satisfy the Statute," p. 187, fol. 366.

But *not* when *enticed* into the State by *fraud*. *See the half dozen authorities just above cited.* The learned Trial Court Judge appeared to lose sight of the fact that when Chaloner was enticed to New York he was not an adjudicated lunatic. *Had* he been that, enticing would have taken on a very different colour—the same colour indicated in *Snelling* v. *Watrous, supra,* "Where a party

has not, in fact, been guilty of any crime" the Court will not permit him to be enticed within a jurisdiction; but where he *has* been guilty of crime the Court will, when the accused is not merely said to be guilty by conspiring relatives, but is actually guilty. Had Chaloner been legally found a lunatic in Virginia it would have been perfectly legitimate to entice him—under proper conditions and for cause proper—into a foreign jurisdiction. But until so found legally no such right exists. The learned Trial Court Judge admitted that it would *not be lawful to entice Chaloner into the jurisdiction of New York in order to collect a twenty-five dollar debt from him;* but *that it would be* to imprison him for life, provided the charge was lunacy made by his worst enemies and perjured at that. (pp. 38-42, fols. 73-81.)

(M) Mayer, J., continues: "The trial court was also correct in excluding testimony offered to show that the testimony in the 1899 Proceedings was perjurious. The question whether the alleged perjurious testimony was true was necessarily adjudged by the New York Court in finding the plaintiff incompetent. This Court cannot determine whether or not the testimony in question was perjured without trying over again the very same issue which the New York Court decided when it made the decretal order complained of. It is well settled that the fact that a judgment is procured by false testimony does not open it to collateral attack," p. 187, fol. 366.

The learned Judge Mayer evidently did not, at this point, bear in mind that "THE QUESTION WHETHER THE ALLEGED PERJURIOUS TESTIMONY (in the 1899 Proceedings, as well as in the original Proceedings in 1897) WAS TRUE" COULD *NOT* have been—as the learned Judge says it was—"NECESSARILY ADJUDGED BY THE NEW YORK COURT IN FINDING THE PLAINTIFF INCOMPETENT," for three

reasons. *First:* Because the plaintiff was kept away from both said Proceedings by the machinations of his family; in 1897 by not being vouchsafed notice of same, and in 1899 by being kept away from same by his family having craftily set same when plaintiff was—and had been for some three weeks previous thereto—bed-ridden, and also because plaintiff was not represented at either of said Proceedings by counsel or—as in *Simon* v. *Craft,* 182 U. S., March 12, 1901, *Opinion by Chief Justice White—by a guardian ad litem.* Hear the language of the learned Chief Justice thereanent: "The Judge of the Probate Court, where the Proceedings in Lunacy were heard, since that Court, upon the return of the Sheriff and the failure of the alleged lunatic (Yetta Simon) to appear either in person or by counsel, in order to protect her interest, entered an order appointing a guardian *ad litem* in the matter of the Petition to inquire into her lunacy; and an answer was filed by such guardian denying all the matters and things stated and contained in the Petition and requiring strict proof to be made thereof according to law." As said already, *First:* "because the plaintiff was kept away from both said Proceedings by the machinations of his family; in 1897 by not being vouchsafed notice of same, and in 1899 by being kept away from same by his family having craftily set same when plaintiff was—and had been for some three weeks previous thereto—bed-ridden; and also because plaintiff was not represented at either of said Proceedings by counsel, or—as in *Simon* v. *Craft, supra,* by a guardian *ad litem*—for the said sundry and various reasons, *plaintiff was utterly estopped and absolutely debarred from getting his allegations concerning the said "the alleged perjurious testimony" before the Court, either* at the 1897 Proceedings, or those of 1899. Never having been brought before the Court, they never *were*

before the Court; never having BEEN BEFORE THE COURT THEY COULD *NOT* HAVE BEEN "NECESSARILY ADJUDGED BY THE NEW YORK COURT IN FINDING THE PLAINTIFF INCOMPETENT."

A further proof of the foregoing is that the proof that the testimony of the *only* lay witnesses against plaintiff's sanity, namely, that of the three Petitioners in the 1897 Proceedings, the *two first* of whom also joined in bringing the 1899 Proceedings to-wit, said Winthrop Astor Chanler, Lewis Stuyvesant Chanler, and a cousin, namely, Arthur Astor Carey—the proof that the testimony of the *only* lay witnesses against plaintiff's sanity in either Proceedings—*all the other witnesses* being hired alienists, paid out of plaintiff's own pocket—by Court order—to find plaintiff insane (see affidavit of E. L. Winthrop, Jr., pp. 140-142, fols. 273-277—the *proof* that the testimony of these aforesaid three gentlemen was *profoundly tainted with perjury* is furnished, *by one of their own number.* Said PROOF OF PERJURY COMING OUT OF THE *VERY MOUTH, OUT OF THE VERY LIPS OF THE CHIEF PETITIONER, SAID WINTHROP ASTOR CHANLER,* in these very Proceedings of 1899 brought by himself, to-wit: p. 132, fol. 255. Winthrop Astor Chanler on the stand being examined by his own counsel, Flamen B. Candler, as to value and extent of plaintiff's property. Mr. Candler: "WHAT NEXT? DO YOU KNOW ANYTHING OF HIS OTHER PROPERTY, ABOUT THE VIRGINIA PROPERTY?" Answer: "I KNOW VERY LITTLE ABOUT THAT. I KNOW THAT HE HAD IT, BUT I HAVE NEVER SEEN IT."

Whereas said three gentlemen all and severally solemnly swear of their own knowledge as to certain falsely alleged acts and falsely alleged utterances, irrational in nature upon the part of plaintiff as having occurred and been uttered in their presence at "The

Merry Mills," Cobham, Albemarle County, Virginia, the home of said John Armstrong Chaloner. Said gentlemen swear in said Petition that the plaintiff "has for several months, while at his home in Virginia, been acting in a very erratic manner," p. 109, fol. 213. As a glance at the said Petition collectively sworn to by said three gentlemen (pp. 108-110, fols. 212-215, inclusive) proves; said *entire* affidavit is made as "true to the knowledge of deponents." And yet said three gentlemen do not hesitate to swear concerning alleged acts and utterances having occurred "to the knowledge of deponents" in a place concerning which the chief Petitioner swears "I HAVE NEVER SEEN IT." As will be shown later, said Winthrop Astor Chanler fully corroborates his aforesaid damaging admission in the 1899 Proceedings, by admitting under cross-examination in the Deposition *de bene esse* brought by himself on or about November, 1905, on the occasion of his wintering abroad, that not only had HE never set foot inside "The Merry Mills"—the home of plaintiff in Virginia—*but neither of the other two Petitioners had either.*

Here follows the preamble aforesaid, to said affidavit of Messrs. Winthrop Astor Chanler, Lewis Stuyvesant Chanler and Arthur Astor Carey, pp. 109-110, fols. 214-215.

"W. A. Chanler, Lewis S. Chanler and A. A. Carey, being duly sworn, depose and say that they have read the foregoing petition and know the contents thereof, and that the same is true to the knowledge of deponents —except as to the matters therein stated to be alleged on information and belief, and as to those matters they believe it to be true.

(Signed):

WINTHROP A. CHANLER,
LEWIS S. CHANLER,
ARTHUR A. CAREY.

Subscribed and sworn to before me this tenth day of March, 1897.

(Signed):

H. A. GILDERSLEEVE,
Justice Supreme Court."

Said proof of perjury coming out of the very mouth, out of the very lips of the chief Petitioner, said Winthrop Astor Chanler, in these very 1899 Proceedings, no allegation concerning "THE QUESTION WHETHER THE ALLEGED PERJURIOUS TESTIMONY WAS TRUE" could by any human possibility be "ADJUDGED BY THE NEW YORK COURT IN FINDING THE PLAINTIFF INCOMPETENT" in these very 1899 Proceedings; since there was no one who could and would bring forward said allegations concerning *"perjurious* testimony"; since, naturally enough, Mr. Winthrop Astor Chanler's own counsel, said Flamen B. Candler, would not push forward any such unflattering and unnecessary charges—from his point of view, at least—said Flamen B. Candler would be the last man on earth to *impeach the testimony of his own witness*—and there was no earthly way in which plaintiff could prefer said charges, he being kept away from court as aforesaid, by being bed-ridden, and unrepresented by counsel or—as in *Simon* v. *Craft, supra,*—by a guardian *ad litem,* appointed by the Court to defend the interests of the alleged incompetent at the said inquisition *de lunatico,* by whom an answer was filed "DENYING ALL THE MATTERS AND THINGS STATED AND CONTAINED IN THE PETITION AND REQUIRING STRICT PROOF TO BE MADE THEREOF ACCORDING TO LAW."

Second: The second reason why "THE QUESTION WHETHER THE ALLEGED PERJURIOUS TESTI-

MONY (in the 1899 Proceedings) WAS TRUE could not, as the learned justice says it was, have been "NECESSARILY ADJUDGED BY THE NEW YORK COURT IN FINDING THE PLAINTIFF INCOMPETENT"—was that the perjurious testimony in the 1899 Proceedings was of two kinds. First, direct; Second, indirect. The first was committed by the other alienists; the second by Dr. Lyon. By which is meant said Dr. Samuel B. Lyon innocently repeated falsehoods which had been told to him by members of the Medical Staff of the Society of the New York Hospital—falsely known as "Bloomingdale."

Dr. Samuel B. Lyon, Medical Superintendent of said Hospital, on the stand in said 1899 Proceedings said in reply to the question of a Juror, p. 118, fol. 231: "DID HE SHOW ANY HOMICIDAL MANIA?" Answer: "HE THREATENED TO KILL US—TO KILL ME; HE NEVER MADE ANY ATTEMPT UPON ME."

It will be noticed that Dr. Lyon does not say "HE TOLD ME THAT HE WOULD KILL ME." In other words, this indirect, and therefore innocent, perjurious statement was honestly believed by Dr. Lyon *because it was reported to him* by one of his Staff. In a word, it was mere hearsay as regarded Dr. Lyon. But that saving fact could not well be brought out; seeing that nothing but cross-examination could possibly bring it out, and, for reasons already fully gone into, cross-examination was totally out of the question in said Proceedings. In an excerpt from plaintiff's voluminous Deposition said absurd falsehood—reported to Dr. Lyon—is fully explained *infra*. It was a mere jocularity upon the part of plaintiff, who remarked to one of the said Hospital Staff that when he got out he was going to have Dr. Lyon and all of them sent to jail for false imprisonment, and he was very much afraid that the confinement of a

jail would kill Dr. Lyon. It was this perfectly innocent and legitimate remark which was distorted into "He threatened to kill us—to kill me" by the time it reached Dr. Lyon's ears. Had the plaintiff had his day in court at the 1899 Proceedings, he has no doubt but that Dr. Lyon, upon cross-examination, would have frankly admitted that this and the other material allegations made against plaintiff's sanity by Dr. Lyon were mere hearsay. Since plaintiff showed on the stand, at his said Deposition, *that Dr. Lyon was a man of the strictest veracity as regarded his dealings with plaintiff while at said Hospital; and had, moreover,* treated plaintiff with the greatest kindness and consideration, consistent with his position as head of the Asylum illegally detaining him in custody. Had said two reasons aforesaid been in the mind of the learned Judge Mayer, we respectfully submit that the learned Judge would not have said "THIS COURT CANNOT DETERMINE WHETHER OR NOT THE TESTIMONY IN QUESTION WAS PERJURED WITHOUT TRYING OVER AGAIN THE VERY SAME ISSUE WHICH THE NEW YORK COURT DECIDED WHEN IT MADE THE DECRETAL ORDER COMPLAINED OF."

Lastly, in this connection, the learned Judge says: "IT IS WELL SETTLED THAT THE FACT THAT A JUDGMENT IS PROCURED BY FALSE TESTIMONY DOES NOT OPEN IT TO COLLATERAL ATTACK." *This is the case only when the issue of false testimony has been made, brought and litigated in the same identical proceeding in which the said judgment was procured.* In *U. S.* v. *Throckmorton, supra,* 98 U. S. 61, we read further, Mr. Justice Miller said: "Where the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced upon him by his opponent, as by keeping him away from court, a false

promise of compromise, or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff * * * are reasons for which a new suit may be sustained to set aside and annul the former judgment or decree, and open the case for a new and fair hearing." The learned Justice Miller continues: "On the other hand, the doctrine is equally well settled that the Court will not set aside a judgment because it was founded on a fraudulent instrument, or perjured evidence, *or for any matter which was actually presented and considered in the judgment assailed.* Mr. Wells, in his very useful work on *Res Adjudicata*, says, Sec. 499: 'Fraud vitiates everything, and a judgment equally with a contract; that is, a judgment obtained directly by fraud.'" The principle and the distinction here taken was laid down as long ago as the year 1702 by the Lord Keeper in the High Court of Chancery in the case of *Tovey* v. *Young Prec.* in Ch. 193. This was a bill in chancery brought by an unsuccessful party to a suit at law, which was at that time a very common mode of obtaining a new trial. One of the grounds of the bill was, that complainant had discovered since the trial was had that the principal witness against him was a *partner in interest with the other side.* The Lord Keeper said: "New matter may in some cases be ground for relief; but it must not be what was tried before; nor, when it consists in swearing only, will I ever grant a new trial, unless it appears by deed or writing, *or that a witness, on whose testimony the verdict was given, were convict of perjury* or the jury attainted." As has just been said, "Fraud vitiates everything, and a judgment equally with a contract;" *note the only exception* except when the fraud "was actually presented and considered in the judgment assailed." And this is further sustained by the words of the Lord Keeper *supra* showing that per-

jury on the part of a witness—discovered *after* the judgment was rendered—upon whose testimony the verdict was given, was ground for a new trial thus: "Nor will I ever grant a new trial unless it appears—that a witness, on whose testimony the verdict was given, were convict of perjury." Since said Winthrop Astor Chanler was "convict of perjury" by his said testimony *supra*, and his fellow Petitioners in the 1897 Proceedings, and his brother Petitioner in the 1899 Proceedings—which conviction is reinforced by said Winthrop Astor Chanler's testimony under cross-examination by the attorney for plaintiff in the Deposition *de bene esse* of said Winthrop Astor Chanler upon the occasion of his departure for Europe in the year 1905, aforesaid, pp. 53-54, fols. 101-102.

Q. "You probably remember that in your application for your brother's Commitment, you and Mr. Lewis Chanler and Mr. Carey signed a Petition in which you state that 'Mr. J. A. Chanler has for several months, while at his home in Virginia, been acting in a very erratic manner'—and then all three of you sign an affidavit stating that you knew the contents of the foregoing Petition, and that the same was true of your own knowledge, except as to the matter therein stated to be alleged on information and belief; *and there are no matters in the Petition which are stated on information and belief;* now I ask you how did you come to make that affidavit of these facts of your own knowledge?" And since said three gentlemen were the only lay witnesses, by which is meant the only witnesses not alienists *employed by them in the* 1897 *Proceedings*, and since the plaintiff was incarcerated as a dangerous maniac upon the said perjurious testimony of said three gentlemen in 1897—and since *the only new allegations of insanity in the* 1899 *Proceedings were supported purely and solely by alien-*

ists in the employ of the other side—by Messrs. Austin Flint, Sr., Carlos F. Macdonald and Samuel B. Lyon, Medical Superintendent of said Asylum, the Society of the New York Hospital; and since the plaintiff was prepared—had he had his day in Court in 1899—to prove the said three alienists guilty of either *direct or indirect perjury—as described above—and since plaintiff's family obtained the* 1899 *verdict against Chaloner solely by means of the said perjury*—either direct or indirect upon the part of the said alienists—the two former of whom Chaloner charges in his said Deposition with perjury explicit and unqualified—*therefore the condition precedent, demanded by the Lord Keeper, supra, before granting a new trial, is disclosed. to-wit*: "Unless it appears—*that a witness, on whose testimony the verdict was given, were convict of perjury.*"

(N) Mayer, J., continues: "The failure of a person affected by an order or judgment to appear after due notice, cannot, of course, affect the validity of an adjudication," p. 188, fol. 367.

A parallel is sought to be instituted by the other side here between the case of *Chaloner against Sherman* and *Simon* v. *Craft*, 182 U. S. No slightest parallel exists as will be shown in an exhaustive discussion of said two cases in Brief-in-Rebuttal *infra*. Let us hear Mr. Chief Justice White on the subject. *"At the trial below there was no offer to prove by any form of evidence that Mrs. Simon was in fact of sound mind when the Proceedings in Lunacy were instituted;* or that she desired to attend and was prevented from attending the hearing; *or was refused opportunity to consult with and employ counsel to represent her.* The entire case is thus solely based on the inferences which are deduced, as stated, from the face of the return of the Sheriff. The writ was duly returned, with the following indorsement: 'Received

January 31, 1889, and on the same day I executed the within writ of arrest by taking into my custody the within named Yetta Simon and handing her a copy of said writ, and as it is inconsistent with the health or safety of said Yetta Simon to have her present at the place of trial, and on the advice of Dr. H. P. Herstfield, a physician whose certificate is hereto attached, she is not brought before * * * the honourable Court, Halcomb, Sheriff.'" Mr. Chief Justice White continues, "And upon the assumption thus made it is contended that the statute, as well as the proceeding thereunder, were violative of the clause of the 14th Amendment to the Constitution of the United States, which forbids depriving anyone of life, liberty, or property without due process of law.

It is not seriously questioned that the Alabama statute provided that notice should be given to one proceeded against as being of unsound mind of the contemplated trial of the question of his or her sanity. As a matter of fact, a copy of the writ containing notice of the date of the hearing of the Proceedings in Lunacy is shown by the Record to have been served on Mrs. Simon. Hence it cannot be presumed *in the absence of all proof or allegation to that effect that the sheriff in the discharge of this duty, after serving the writ upon the alleged lunatic, exerted his power of detention for the purpose of preventing her attendance at the hearing, or of restraining her from availing herself of any and every opportunity to defend which she might desire to resort to, or which she was capable of exerting.*"

Per contra.

In *Chaloner against Sherman,* applying the exact language of the learned Chief Justice—"At the trial below (in 1912) *there was every offer to prove by every form of evidence that Chaloner was in fact of sound mind*

when the Proceedings in Lunacy were instituted (in 1897) *and that he desired to attend and was prevented from attending the hearing" by being kept in ignorance of said hearing and receiving no notice thereof.* Also, regarding the *Proceedings in* 1899, "He was refused opportunity to consult with and employ counsel to represent him." The entire case of *Chaloner against Sherman* is *thus solely based upon admittedly perjured affidavits, and perjured testimony, offset by written and other acts of Chaloner* indicating continued sanity for over fifty years—for Chaloner's *entire life*—as well as Court Records of the States of Virginia and North Carolina establishing same. In a word, there was no hint of foul play in *Simon* v. *Craft,* whereas in *Chaloner against Sherman* there was every indication—besides every possible claim by Chaloner of foul play upon the part of Sherman against him.

Moreover, there was a guardian, *ad litem,* appointed in *Simon* v. *Craft* to represent Mrs. Simon. *There was no such safeguard thrown around the liberty and large property rights of John Armstrong Chaloner in either the* 1897 *or* 1899 *Proceedings.*

(O) Mayer, J., continues: "The record shows that scrupulous care was exercised in serving the various notices of motions and Proceedings on Chaloner," p. 188, fol. 367.

No notice whatever was served on Chaloner in the initial Proceedings of 1897. In 1899 scrupulous care was indeed taken in serving notice upon Chaloner which his family well knew was of no avail to him at that time, owing to his then physical illness—from the anxiety they proved they one and all felt lest he should get a hearing in open court, as shown by their care and foresight in hiring lawyers and alienists *years before Chaloner's escape from said hospital in* 1900 as shown in the

affidavit aforesaid of said Egerton L. Winthrop, Jr., of the firm of Jay and Candler, Attorneys, 48 Wall Street, New York, setting forth a claim for a fee of one thousand dollars—*to be paid, be it understood, by John Armstrong Chaloner's estate*—in return for the "great care and much attention" bestowed by said Winthrop in carrying out the wishes of his clients, the Chanler family! p. 140, fol. 273.

It is therein also shown that said Winthrop marshaled the various alienists arrayed against Chaloner in the 1899 Proceedings, thus (p. 141, fol. 274): "After receiving the reports of Doctors Carlos F. Macdonald and Austin Flint, deponent had long interviews with Doctors Lyon, Macdonald and Flint, it being expected that any time John Armstrong Chanler might take proceedings for his release" (all this began in December, 1897—fol. 273) "subsequently (fol. 274) in the month of August, 1898, deponent had a long conference with Mr. Lewis S. Chanler, one of the Petitioners, and had some correspondence with Doctors Macdonald and Flint *in reference to the condition of Mr. Chanler and arranged with these doctors to be prepared to testify at any moment.* That subsequently, in the month of April, of this year, 1899, the family commenced their Proceedings for the appointment of a Committee for Mr. Chanler, and before these proceedings were started deponent had a cable correspondence with both the Petitioners herein, and also with Stanford White, who represented the alleged incompetent person, and thereupon, Lewis S. Chanler, one of the Petitioners, came over from Europe to attend to the matter, and subsequently Winthrop Chanler also came over from Europe for the same purpose." (fol. 274) "And also deponent had a number of conferences with Winthrop Chanler (fol. 275), one of the petitioners, and with Mr. Henry Lewis Mor-

ris" (the lawyer for the Chanler family generally—see fol. 276): "Deponent further says that the expert physicians examined before the said Commissioners (Messrs. Ogden, Fitch and Sherman, fol. 275) and Jury herein, were Dr. Samuel B. Lyon, Dr. Carlos F. Macdonald, and Dr. Austin Flint, and they have certain claims against the estate of said John Armstrong Chanler for their compensation herein, and in the opinion of deponent the order to be made herein should contain a provision in substance leaving the payment of these claims to the discretion of the Committee to be appointed in this Proceeding. Egerton L. Winthrop, Jr." (fols. 276-277).

It is plainly visible from a careful examination of the above that the Chanler family were thoroughly concerned lest John Armstrong Chaloner should, by hook or crook, have his day in Court. They began their machinations in 1897, in the month of December—when Egerton L. Winthrop, Jr., was employed to marshal the alienists and have them and the Petitioners *ready to bring the Proceedings before the Commission and Sheriff's Jury when Chaloner should begin physically to* succumb *to the frightful strain of his environment*—a Madhouse. They dared not do it before Chaloner's nervous system had begun to sustain injury, for they very well knew that he could state his case as easily on the witness stand as he did in the letter of some five thousand words, to Commonwealth's Attorney Micajah Woods (Plaintiff's Exhibit 6 for Identification, pp. 154-173, fols. 303-339) written in July,* 1897—within four months of his incarceration. Therefore, although said Egerton L. Winthrop, Jr., was employed as early as December, 1897, he did not strike—did not bring

*"July 30" is a stenographer's error for "July 3." See affidavit of Captain Micajah Woods *in re* receipt of same, p. 154, fol. 303.

the Proceedings—until the *Spring* of 1899—*Why not?* Because Chaloner was in perfect physical and mental condition during all that entire time. *There is no mention by any one of the three said alienists when on the stand of Chaloner's having to be treated for anything during the more than two years he had been in "Bloomingdale"* when said Proceedings of 1899 were brought. *Not one of them testified that Chaloner had taken so much as an ounce of medicine during that entire time.* But although Chaloner's physical health was superb, still his strength first began to be affected in the *Fall* of 1897 *about the time* that said Egerton L. Winthrop, Jr., was called in. Chaloner had all summer been taking rather long walks, with a keeper about the grounds. He gradually shortened them through increasing physical weakness—the first sign of the nervous attack which culminated in the physical attack on his spine described by him in the 1899 Proceedings. Therefore, so soon as the Chanler family knew that he had *begun* to succumb to the physical pressure of his environment, *they took steps to be ready to have Proceedings brought 20 miles off in New York City,* so soon as his nervous affection—brought on by his environment—should break out *and confine him to his bed.* Chaloner was still holding his own, when said Winthrop sent his alienists, said Flint and Macdonald, up to Chaloner's cell to spy out the land (p. 141, fol. 27, and also p. 120, fol. 234). Dr. Carlos F. Macdonald, on the stand: "I first visited John Armstrong Chanler at the Bloomingdale Asylum for the insane, on March 16th, 1898, in company with Dr. Austin Flint of this city. Doctor Flint and myself * * * again visited Mr. Chanler on April 9th, 1898. He cordially invited us to walk into his room at once," (p. 122, fol. 238). "There was no sign of the want of muscular power to direct his movements, and no sug-

gestion of paralysis about him. He stated that he slept well, and that his bowels were regular, and that he was in *perfect* mental and *physical* health," p. 123, fol. 240.

There is, therefore, no possible sign of the hypochondriac in Chaloner, thirteen months after his incarceration. One year later, however, the trouble which had shown itself in loss, gradual loss of strength for outdoor exercise, came to a head and (p. 114, fol. 225, Dr. Lyon on the stand, in the 1899 Proceedings): "I asked him if he wanted to be present here; he said he was physically unable to be present on account of pain in his spine—he also said his knee was affected in the same way and he would be unable to come," p. 115, fols. 225-226.

"Q. (folio 675): Did that infirmity really exist, or was it a delusion?

A. I think he has a pain in his spine, but I do not think it would incapacitate him from coming here. I think he felt some pain—he was sincere in that, but it was not an incapacity that would prevent an ordinary person from going out; he did not feel as if he could stand up; he *has kept his bed for over three weeks, at least.*"

How much did Dr. Lyon's handsome fee have to do with this statement—a fee so substantial (p. 142, fol. 276) presumably, that though said Egerton L. Winthrop, Jr., did not hesitate to ask a thousand dollars of Chaloner's money for having Chaloner declared insane for life, yet *did* hesitate to name said Dr. Samuel B. Lyon's fee, and suggested that it be left to the Committee to be appointed by the Sheriff's Jury Proceedings in 1899; (p. 142, fols. 276-277) said "Committee" being no less a personage than a *brother-in-law of Stanford White,* the man who had *lured* Chaloner from Virginia to New York; and said "Committee" being also a *partner* of Joseph Hodges Choate, Sr., who was, at said

time—and is to this day—senior partner of the firm of Evarts, Choate and Beaman,* of which law firm said "Committee," said Prescott Hall Butler was a member, as is Thomas T. Sherman, today. Moreover, said Joseph Hodges Choate, Sr., was at said time—and for all Chaloner knows to the contrary is today—is now—one of the Board of Governors of said Society of the New York Hospital, said "Bloomingdale," falsely so-called, which Institution is not a State, or public, Institution, or an eleemosynary Institution, but is a purely money-making Institution, *which did not hesitate to make some twenty thousand dollars out of Chaloner, by charging* him one hundred dollars per week—*not counting extras*—as appears from the back of the cover of the Commitment Papers of 1897, for a two-room cell for three years and eight months, and over. (*We are unable to find reference to the back of said Commitment Papers*† *in the Transcript of Record.*)

If Chaloner were a hypochondriac he would have kept his bed, *and been there yet,* instead of practicing walking such great distances of an afternoon that he was able to *walk away* Thanksgiving Eve, 1900, and make, thereby, his *escape.*

Dr. Samuel B. Lyon was Chaloner's jailor at the time, at the time of the 1899 Proceedings. Dr. Samuel B. Lyon stood in the same relation to Chaloner that the Sheriff did to Mrs. Simon, in *Simon* v. *Craft, supra. But no hint or whisper even, ever was made that the Sheriff received a fee for holding Mrs. Simon, or having her declared insane. Whereas said Egerton L. Winthrop, Jr.'s affidavit, supra* (p. 140, fol. 273) *shows that said Dr. Samuel B. Lyon was one of the experts*

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*Now Evarts, Choate and Sherman.

†Since found p. 114, fol. 224, "Legal Status (State whether indigent, public or private). Private. Price per week, $100.00."

in the employ of the Chanler family to declare Chaloner insane and incompetent for life, and moreover, a patient at one hundred dollars per week in the Hospital of which said Dr. Lyon was the Medical Superintendent. (Dr. Lyon on the stand, p. 117, fol. 229): "Q. Is the disease progressive? A. The disease is *a permanent* disease and progressive in the stages I have mentioned." (p. 117, fol. 230). "Q. What disease is he suffering from? A. Paranoia; by some it is called systematized delusional insanity."

(P) Mayer, J., continues: "If the trial judge had received in evidence the excluded letter written in July, 1897, by Chaloner to Woods, a Virginia attorney, it would have appeared that he then wrote: "It is unnecessary for me to say that nothing but the most unexpected and dire necessity could induce me to go before a 'Sheriff's Jury' the usual manner in the State of New York of carrying out a Habeas Corpus Proceedings for a man who has been declared insane by a Judge—because it is not the right way to go about it. I am not a citizen of the State of New York, and therefore the Sheriff's Jury does not apply to my case."

Chaloner admits frankly that it *could* come about so unfortunately for him—as a lawyer knowing his constitutional rights—that he *might* be forced "to go before a Sheriff's Jury." He emphatically does *not* say "NOTHING COULD EVER INDUCE ME TO DO SO." HE ADMITS FRANKLY THAT HE COULD BE INDUCED TO DO SO UNDER THE FOLLOWING CIRCUMSTANCES, NAMELY, UNDER STRESS OF "THE MOST UNEXPECTED AND DIRE NECESSITY."

Now, when one considers that said Micajah Woods admits in his affidavit (p. 154, fol. 303) that (he) "I received the appended letter addressed to me, under

date July 3, 1897, in October, 1897, that the said letter is in the handwriting of John Armstrong Chanler and signed by John Armstrong Chanler"—when one considers that said Woods received said letter praying him to bring *habeas corpus* Proceedings in a Federal Court, in company with the late United States Senator from Virginia, John Warwick Daniel, in October, 1897; and, in the Spring of 1899 said Micajah Woods had not *yet* made the first move to bring said Proceedings, we respectfully submit that the contingency which would open the doors of a New York State Court to Chaloner—as outlined by him in said letter to said Woods—had arisen, namely, *"the most unexpected and dire necessity"* aforesaid. Therefore the implication by the learned Judge Mayer that Chaloner "absented himself from the 1899 Proceedings by his own choice," we respectfully submit, is not borne out by the extract from said letter, of July 3rd, 1897, from Chaloner to Commonwealth's Attorney Micajah Woods of Albemarle County, Virginia.

Moreover. The learned Judge Mayer appears to lose sight entirely—we respectfully submit—of the salient fact that in said letter to said Captain Micajah Woods, Chaloner was outlining the commencement of a Proceedings to be secretly brought by said Woods. Upon the other hand said learned Judge Mayer appears to lose sight entirely—we respectfully submit—of the fact that in 1899—*two years after* said letter of July 3, 1897, to said Woods—the *conditions had utterly changed;* and *instead* of their being Proceedings brought by said Captain Micajah Woods and the Senator John Warwick Daniel —they were *now—in* 1899—*Proceedings brought by the hostile Chanler family.* Therefore said learned Judge Mayer appears to lose sight entirely of the fact that—as in a game of chess—the situation is entirely changed,

and that all Chaloner *now* has to do—in order to be true to his plan of campaign in a Federal Court as aforesaid—is to—by his said attorneys—*have the action removed* from a State to a Federal Court on the ground of diverse citizenship. See *Chanler against Sherman*, 162 Fed. Rep., 19, *supra*.

(Q) Mayer, J., continues: "And it further appears from Chaloner's Deposition excluded by the trial Judge that he absented himself from the 1899 Proceedings by his own choice. If, therefore, he knew at that time what he was doing, he deliberately failed to appear when full opportunity was afforded to him so to do." p. 188, fol. 367.

If the trial Judge had received in evidence the excluded Depositions made in 1908, and 1911-1912 by Chaloner, it would have appeared that he showed that it was impossible for him to get the confidence of any lawyer, from the fact that he was in an Insane Asylum. He had attempted to employ the late Senator David B. Hill, but to no avail. He had later attempted to employ Commonwealth's Attorney Micajah Woods, and Senator John Warwick Daniel, but to no avail. Therefore Chaloner knew that to get a lawyer he must see him face to face. Therefore when Dr. Lyon says (p. 119, fol. 232) in reply to the question "The only reason for not producing him is his own wish. A. That was his decided wish, I gave him the opportunity, and to employ counsel or anything he wanted to do," there was no possible hope held out to Chaloner in that offer. *A glance at p. 160, fol. 314, will show from the following paragraph in said letter of July 3, 1897, what Dr. Lyon's alleged offer "to employ counsel" amounted to. It requires no argument to support the statement that a client should be allowed to approach his counsel at first hand,* that is to say *before anybody else has got his ear and poisoned*

it against him. "This is the first opportunity which I have had of posting a letter unbeknown to the authorities here. The rule is, that all letters and telegrams must be sent through the authorities here; who have the legal right to suppress or forward to the Commission in Lunacy at Albany, who have again the legal right to suppress or destroy them. You can readily understand that I would not send a letter under such conditions. Hence my having to wait four months to write you and ask your aid."

An examination of the brief of Joseph H. Choate, Jr., counsel for the defendant, Sherman, before the Circuit Court of Appeals, throws a light upon the above mentioned language of the learned Judge Mayer (p. 188, fol. 367) that "It further appears from Chaloner's deposition—that he absented himself from the 1899 Proceedings by his own choice." The learned Judge evidently did not have time to read the section, alluded to, of Chaloner's Deposition and relied upon the statement thereanent to be found in said brief of said Joseph H. Choate, Jr., to-wit: "From the plaintiff's own testimony in his colossal Deposition, it abundantly appears that he absented himself from the 1899 hearing by his own choice."

We regret to observe that said statement by said Choate is entirely unsupported by fact. We shall presently produce the said selected portion of Chaloner's Deposition to sustain said Choate's contention—selected by said Choate in his brief—before doing so we must draw this learned Court's attention to another wholly unwarranted assertion by said Choate, relating to Chaloner's position. To wit, said Choate says (page 14, of his brief on appeal in *Chaloner against Sherman*): "The plain fact is, of course, that one who is physically unable to attend a trial is by no means denied an op-

portunity to be heard if he is able to retain and consult freely with counsel." Said Choate here states a truism, practically, but *utterly without foundation in fact* as regards Chaloner's situation. He goes on, "The fact that plaintiff-in-error in this case was entirely at liberty to retain and consult with counsel, appears not only from the fact that he wrote long and full letters (sic) to at least one of his counsel" (fol. 335-6, Letter printed as Exhibit 6 for Identification, fol. 914).

Said Choate starts out by saying that Chaloner "wrote long and full letters (sic) to at least one of his counsel" and proceeds to support the assertion concerning "long and full *letters*" BY ONE SOLITARY LETTER. This type of inaccurate statement in said Choate's brief—which we shall show more than one specimen of as we proceed—is undoubtedly the cause of the learned Judge Mayer's aforesaid statement—*he relied upon the accuracy of said Choate's claims.* How, moreover, said Choate could honestly and truthfully found such a statement as that Chaloner "was entirely at liberty to retain and consult with counsel" upon one sporadic letter which, from its addressee's own admission, REQUIRED SOME FOUR MONTHS—see *supra* —p. 154, fol. 303: "I, Micajah Woods, Commonwealth's Attorney for Albemarle County, Virginia * * * received the appended letter addressed to me, under date July 3, 1897, in October, 1897"—for Chaloner to SNEAK THE LETTER OUT—so to speak—"UNBEKNOWN TO THE AUTHORITIES HERE," *surpasses our comprehension.*

Referring now to the testimony of said Micajah Woods concerning his receipt of said letter (p. 60, fol. 113) "I received a letter from the plaintiff (Chaloner) in about October, 1897. The letter was brought to me by a New York lawyer by the name of Philip, Mr. Philip." This

proves beyond cavil the inaccuracy of said Choate's said statement, *supra*, that Chaloner "was entirely at liberty to retain and consult with counsel;" when he, Chaloner, was so far debarred from the use of the mails that instead of posting a letter in the ordinary manner, or even registering the same for extra security, he was in such a plight that for safety he had to intrust said letter to a New York lawyer. It further appears—as will be fully gone into *infra*—from Chaloner's Deposition excluded by the trial Judge, that said Philip—said "New York lawyer"—played false with Chaloner, and that upon handing said letter to said Woods, had said, in effect: "Do nothing in this matter without consulting me." This had so alarmed said Woods that he let the matter drop then and there.

Said Choate continues, p. 14, *ibid:* "But also from the testimony in the 1899 Proceedings (fol. 695) which shows that at the time in question he was on parole and at liberty to go where he pleased within large limits (fol. 692)." This statement of said Choate is highly deceptive. For though Chaloner was undoubtedly *just then* placed on parole, yet, *by the mouth of Dr. Samuel B. Lyon said Choate's own alienist, together with Drs. Flint and Macdonald, it is proved that Chaloner was bed-ridden and unable to make use of said parole:* (p. 114, fol. 225). Said Dr. Lyon on the stand in said 1899 Proceedings:

"Q. When did you last see John Armstrong Chanler?

A. Last Wednesday or Thursday, about three days ago.

Q. Did you see him in regard to attending before this Commission and Jury today?

A. Yes, sir. I knew this case was approaching and I visited him and asked him what he wanted to do in regard to it; whatever he wanted to do I wanted to carry

out. I asked him if he wanted to be present here; he said he was physically unable to be present on account of pain in his spine—(and p. 115, fol. 225). A little subsequently to that I received a request from him to come over again.

Q. In what place?

A. To his room. He did not wish me to represent him, but I should come in his place, or say that he could not come on account of his infirmity, (and fol. 226)—he has kept his bed for over three weeks at least."

And again from Dr. Lyon (p. 118, fol. 231): "I gave him the parole of our grounds—HE WENT OUT BY HIMSELF AN HOUR OR SO—AND THEN HE CEASED TO GO OUT BECAUSE HE WAS PHYSICALLY UNABLE."

How a man can truthfully say that such citations as the above "show that at the time in question he was on parole and at liberty to go where he pleased within large limits" passes our comprehension.

When it is further borne in mind that Dr. Lyon said at the same Proceedings of 1899—on the very same day—(p. 114, fol. 225, *supra.*) Q. "When did you last see John Armstrong Chaloner? A. Last Wednesday or Thursday, ABOUT THREE DAYS AGO" and again (p. 115, fol. 226) on the same occasion "He has kept his bed for over three weeks at least" *there can be no further doubt but that said Choate was deliberately aiming to deceive the Court; by trusting that the Court would believe that he was stating the truth and not look up each and every reference made by him, most naturally.* How, we respectfully submit, can a man "be at liberty to go where he pleased within large limits" when he is confined —and has been for three weeks—except for "an HOUR OR SO AND THEN HE CEASED TO GO OUT BECAUSE HE WAS PHYSICALLY UNABLE?" *How*

can a man "be at liberty to go where he pleased within large limits" when he is—and has been for "over three weeks at least"—confined to the narrow limits of his bed?

Said Choate continues: (p. 14 of his said brief) "There is no suggestion in the case at Bar that the plaintiff even suggested a wish to be present or to have the trial at a later day. On the contrary, it appears from the testimony in the 1899 Record that he deliberately and of his own preference, refused to attend (fols. 674, 695)." Turning now to said Choate's supports for the above statement (fol. 674) (p. 114, fol. 225) Dr. Lyon on the stand: *"I asked him if he wanted to be present here; he said he was physically unable to be present on account of pain in his spine—and he also said his knee was affected in the same way, and he would be unable to come."* Said Choate stops short in his citation, for in the very next sentence Chaloner gives a respectful instruction to Dr. Lyon *to carry a specific message from him to the Commission and Jury, explaining his physical condition precisely,* leaving it to them as honourable and humane men their legal and official duty, namely, postpone ing until his indisposition should pass, o mittee appointed by them to visit him an case. It was not for him, a prisoner, to act the Court—the Commission and Sheriff's Jury—he simply and respectfully stated the truth, and left it to their sense of honor and propriety and judicial sense of duty to take the only steps possible to cure the evil of the situation. To-wit: either postpone the Proceedings to a later day—the Record shows Chaloner walking about once more and *fully able to attend Court inside of ninety days from said time*—or appoint a Committee from the members of the Commission and Jury to visit Chaloner and view him face to face. If

the distance was not too great for Chaloner to go to the Commission and Jury, we respectfully submit it was not too great for the said Committee to visit Chaloner, since he—a prisoner without counsel—was not in a position to do anything else.

Chaloner went so far as to send for Dr. Lyon a little later, and *reinforce* the statement that "he was physically unable to be present on account of pain in his spine"—*which in itself carried a respectful suggestion to a Commission and Jury alive to their duty to postpone the case*—not satisfied with this implied request, Chaloner *sent* for Dr. Lyon. Said Dr. Lyon says *supra* (p. 115, fols. 225 and 675): "A little subsequently to that I received a request from him to come over again." Q. "In what place?" A. "To his room. He did not wish me to represent him, but I should come in his place or say that he could not come on account of his infirmity." Said Choate further cites above, folio 695 (p. 118, fol. 232): Said Dr. Lyon on the stand. Q. "The only reason for not producing him is his own wish? A. That was his decided wish." Naturally, a man with an afflicted spine and knee, *which had, and still did, pin him to his bed for three weeks,* and still would for some three months more, does not wish to undertake a 20-mile railway journey. But, we respectfully submit, there is much more in this apparently artless question upon the part of the artful Candler—of Jay and Candler—who, with said Egerton L. Winthrop, Jr., of the same firm, were the lawyers employed by the Chanler family to bring said 1899 Proceedings. Said Candler evidently desires to instill into the minds of the Jury that *nothing but willfulness prevented Chaloner's presence before the Commission and Jury.* Note the craft in said Candler's question aforesaid, to wit: "The *only reason* for not producing him is his own wish?" The *"only reason."*

Dr. Lyon innocently falls into the trap thus set by the crafty Candler and at once and honestly replies: "That was his decided wish."

There is no hint here upon said Candler's part of an ill man, suffering with spinal trouble and an ailment in the knee. Which two *ailments* were the *reason* for Chaloner's absence from said Proceedings and NOT the WISH, not to be tortured unnecessarily by being forced to journey 40 miles—20 miles each way—to Court on Manhattan Island—in his present bedridden condition. The ailments aforesaid are the cause of Chaloner's non-appearance—not the *ex post facto* "WISH" aforesaid arising directly from and out of said *ailments*.

Bearing the above in mind, how far indeed from the facts appears the following statement of said Choate, page 14, *ibid.*: "The utmost extent to which the offer of proof went was to proffer evidence to show that the conditions imposed upon the plaintiff-in-error by his confinement and illness may have made the conduct of his defence inconvenient." "Impossible" is the only word a careful man would dream of employing in the premises—"inconvenient" in the premises is an absurdity.

In conclusion, touching this particular, Mr. Choate's erroneous statements are cumulative. *The following is the climax* for which there is actually *no justification*. He says, page 15 of his said brief: "From the plaintiff-in-error's own testimony, in his colossal Deposition, it abundantly appears that he absented himself from the 1899 Hearing by his own choice, being free to attend and to consult counsel. (Plaintiff's deposition, Vol. V, pp. 122-142)." "The passages referred to seem to us to demonstrate the fact so completely that no amount of evidence to the contrary could convince the Court that the plaintiff-in-error's failure to appear at the 1899 Hear-

ing was because opportunity to be heard was denied him. It is to be remembered that the plaintiff is himself a lawyer, to whom, if sane, the importance of the 1899 Proceedings was doubtless evident." We now insert said passage upon which said Choate bases the above statement.

DEPOSITION, VOL. V, pp. 121-142.

Q. You think the disease will terminate soon in death?

A. No, sir; there is no likelihood of that.

By a Juror: Has he ever made any attempt to escape?

A. No. He has no desire to escape—he has made no attempt to escape. I granted him the privilege of all the grounds—I gave him the parole of our grounds on his honor—he is a very honorable man; he went out by himself an hour or so—then he ceased to go out because he was physically unable to on account of his unlikelihood. Q. "What have you to say to this?"

A. I reply to that, in the first place, this showed my healthy condition. Dr. Lyon says without equivocation or hesitation, when asked if I am likely to die soon: "No, sir; there is no likelihood of that." That was after I had been two years in "Bloomingdale" under the most frightful conditions as above described, and during that time I had never touched any medicine of any sort, kind or description; as I may have stated, I never took anything but quinine from time to time to keep off malaria, with the exception of Stearns Wine of Cod Liver Oil, which I took for the first few weeks of my incarceration as a tonic, largely

to help me stand the extra terrible strain of my hideous surroundings, dropped it after a few weeks and never recurred to it, because I was perfectly healthy, with the exception of quinine, which is a tonic and not a medicine, and porous plasters for my spine, which again are not medicine, but plasters—I never bought five cents worth of medicine of any description. Now, one of the first things in lunacy is the effect on the liver. *Bona fide* lunatics' livers are sluggish and I would see trays going up with medicine, with cathartics, for my various lunatic colleagues. That is something I never took when in "Bloomingdale"; I never took a pill and I never took any salts or anything of the sort; my liver was in perfect condition, and that is one of the proofs that I was absolutely sane. The liver being one of the first things to be attacked in case of *bona fide* lunatics; second, a sleeping draught. On these trays containing medicines which went by my door to other cells there would be sleeping draughts, sometimes a regular thing; it is well known that lunatics frequently do not sleep well, and they have to have sedatives to induce sleep; I never had anything whatever to make me sleep; I slept like a log for nine to ten hours a night after I conquered my environment, dominated my environment in the fear, the dread, the horror of assassination by lunatics by strangulation; after I dominated that I slept like a top; it took me about a year because the cause of the danger was there for a year, before the newspapers I took had accumulated in sufficient numbers to make columns high enough to act as a barrier to the opening of my hall door of my cell, aforesaid; (the cell doors were always unlocked).

My bills, paid while in "Bloomingdale," will show—my accounts—that I never bought anything. Of course, it is possible they have faked up accounts now and have accounts to put before a jury that I bought this or that; the jury can draw their inferences; *they can't draw accounts of course.* Now, as regards my not wanting to escape: Dr. Lyon says in answer to the question: "Has he ever made any attempt to escape? A. No, he has no desire to escape—he has made no attempt to escape." Now, that is a fact. I had no desire to escape. Escape was repugnant to me. I wanted to get out by legal means; I wanted to get out through the means of lawyers bringing *habeas corpus* proceedings to get me out, as my letter to Micajah Woods of July 3rd, 1897, shows. I wanted him and the late United States Senator John W. Daniel, of Virginia, to go to New York and get out a *habeas corpus* writ and get me out, sue out a *habeas corpus* writ to get me out. The letters that I have put in exhibition here, put in evidence, prove beyond cavil that I had no intention whatever; that Dr. Lyon is perfectly frank when he says, "He had no desire to escape."

I only escaped when the ill-advised acquaintance of mine, Mr. H. H. Frost, Jr., a lawyer of New York City, took the responsibility of taking the game in his own hands without consultation with me and saying that he would not visit me without the knowledge of the authorities at "Bloomingdale"; that meant the death and destruction of my hopes and eventual death to me—I would certainly have died suffering a physical decline—not a mental decline—if I had continued in

"Bloomingdale" for a number of years. I escaped on a night's notice on reading this calamitous letter.

I don't blame Mr. Frost; I simply don't agree with his judgment; that is all in this particular. He meant well. I was forced to escape. Had I not it required no talk to show that Mr. Frost would have gone on, had he been as good as his word, which I have no doubt he would have been, communicated with the authorities and they would thereby have known that I was communicating with the outer world and stopped my privileges of walking without a keeper; they would know that I was communicating with the outer world, because it would be the part of common sense to say, "Why did Mr. Frost wait for two years before communicating with the authorities and desiring to see Mr. Chaloner?" The next natural line of reasoning would be that: *"Mr. Chaloner must be communicating by letter with the outside world. This is against the rule, and his privilege of walking must be withdrawn."* Then I would truly have been in a desperate situation. My record in "Bloomingdale" and after writing this book—law books, etc.—history, "Four Years Behind The Bars," shows that I am as interested, to put it mildly, in reforming Lunacy Laws as I am in the repossession of my own property; that I am willing to sacrifice years of my life, be in poverty—I was in poverty after the first years of this escape from "Bloomingdale"—accept poverty, suffer poverty—and nobody knows what poverty is until they have suffered it—suffer poverty in preference to obtaining riches by practically the stroke of a pen, by simply

having my case briefed on enough law to get my property. I would not do that, however. The record shows that; the record shows that I declined to accede to Senator John W. Daniel's stand; that he would brief one or two points of lack of notice and lack of opportunity to appear and be heard, in my case, but not go any further on the trial by jury-rights of alleged lunatics before indefinite incarceration sets in—and the illegality of the trials had *in absentia*. I have been fully sustained, as these law reviews show, that have criticized the "Lunacy Law of the World," and it is unnecessary, of course, to touch on them here. I was absolutely determined to live up to my Hannibal oath aforesaid in "Bloomingdale," registered on the margin of a page of Stormonth's Unabridged English Dictionary; that I would sacrifice every year of my life, and every dollar of my property that was necessary to cleanse the Augean stable of lunacy legislation throughout, as it turned out, about fifty per cent of the States of this great Union; as I had that duty which chance had thrust in my grasp decidedly against my will—I had been lugged to "Bloomingdale" and chucked behind the bars; I had not gone there willingly on the record—this duty which had come to me by pure chance, which, if I were to be true to my oath as a member of the Bar of New York State—not of the City of New York or the County of New York—I was admitted in Poughkeepsie as a member of the State Bar, quite a different proposition from the bar of the City of New York, and the Bar Association of the City of New York—which oath says, in effect, that I will protect the Constitution

of the United States and of the State of New York, and I know that both Constitutions are being ruptured, and are being outraged and raped by these villainous lunacy laws of 1896, passed by the Republican Legislature which sat in 1896—if I were to be true to the said oath and also to my duty as an officer of the Court, because lawyers are officers of the court, and if I were to live up to the legal maxim "It is a fraud to conceal a fraud," if I were to follow the road which was pointed out to me so clearly by this oath, by my being an officer of the court, and by the said legal maxim, *I was bound to stick at nothing which could prevent the airing of this hideous crime against the Constitution of the United States and the State of New York and the* Declaration of Independence, and the absolute rights of the individual as laid down by Sir William Blackstone in his Commentaries—I must stick at nothing which raised itself as a barrier between me and my day in Court—I must stick at overcoming nothing which raised itself as a barrier between me and my "day in court"; I was willing, and the record shows that I was willing, to risk my life to that end; I will show that further on another occasion, another day, I will show that I was offered my *release* from "Bloomingdale," but with a string to it, with a string of "hush up," with a string of "Don't say a word," with a string of "Nothing doing against 'Bloomingdale'." I politely——.

Mr. Duke: Mr. Chaloner, I beg your pardon. Are you reading from a book?

The Witness: No, sir; I am not.

Mr. Duke: You know that would not be proper.

The Witness: Oh, no; not at all. It is nothing but the record in the proceeding, not a word else.

Mr. Duke: Oh, well, go ahead; that is all rig t.

The Witness: (Continuing): I politely declined this offer, by which I mean that I *did not* decline it, but said nothing when it was offered to me and simply kept silent without allowing any expression to enter my countenance, whereupon the proposer of this proposition asked me again what I thought of the proposition, and I then said, "This is the first time it has been presented to me." I then paused. The Ambassador of the other side who made this offer (I flag the Docs)* when I say the Ambassador, I don't mean that he was Minister Plenipotentiary of the United States,—the Ambassador of the other side then said, in effect: "Will you let me know—you will consider it?" I then said nothing. He then said, "Will you let me know *when you have considered it?*" I said, "Yes." My "politic" denial of it—denial of his request, or rather my refusal of his request, was contained in the fact that I never notified him, because I never "considered it"; I never notified the Ambassador, because I never considered it in the shape of weighing the proposition with a view to whether I ought to take it or not. That will be referred to at another time, but in the interim, I trust, when I say that I was offered an opportunity to escape—not escape, but leave ("Bloomingdale") quietly, but with the knowledge of the authorities on condition that I hush the whole matter up and brought no charge against anybody and made no com-

*This phrase is elucidated, Appendix, pp. 377-378.

plaints of any nature whatever. The experience I had in "Bloomingdale"—the visit from this gigantic maniac I had at night—prowling in my cell—and the murderous attack on me by this strapping six-foot Irish keeper—suggests the fact that "Bloomingdale" is not a healthy residence for a person whose death would benefit certain other people who are his "heirs at law, next of kin, and inheritors of his entire estate"; and I took this risk of daily fighting for my life, nightly fighting for my life, with either maniac or keeper for years, in order that I might get out of "Bloomingdale" according to law, and get out of it with the slate cleared of my charges against illegal lunacy laws of New York and the rest of the States of the Union which have illegal lunacy laws.

Having made this voluminous explanation, the jury can understand that I did not escape until I was forced to escape by the unfortunate decision of Mr. H. H. Frost, in my regard aforesaid. I was willing to suffer anything short of death; I was willing to suffer the risk of death, the daily risk of it and nightly risk of it, of the torment of "Bloomingdale" of the pain in my spine brought on and continued by my presence in "Bloomingdale," the deprivation of everything that makes life worth living, my living in a hell on earth, cut off from my property, from my budding affairs which held out another fortune to me beside my own. As has been shown on the record, by the letters of Albert Legg, I received an offer—as one of his letters shows—a bona fide offer of—in round numbers—five hundred thousand pounds—$2,500,000—for my self-threading sewing machine attachment, patented, known as the *Self-*

Threading Sewing Machine Company, which took a prize—or the highest award—at the World's Fair at Chicago, and for which forty thousand dollars worth of orders were booked during that Fair's duration; besides my patent pavement which I patented myself, which also received the highest award at the said Fair, and for which I received an offer from the Mayor and Syndic of Marseilles, France, for the paving, ultimate paving, of the City of Marseilles, if my paving proved durable; a fact which had already been proved by its having been laid down in England for years in a private place where the public would not know it, or see it, but where it had steam rollers and heavy steam English machinery, farm machinery, pass over it daily. The business men of the jury will readily recognize the parental interest and care that I would naturally feel in a patent of which I was the controlling stockholder, a one hundred thousand dollar patent, paid up; and another patent in which I had put thousands of dollars for patent rights—all in a lapse of years, certainly $25,000 for the patent rights—without which patent rights I would never have received the Marseilles order, which I did, so that the jury will see that I showed business acumen, judgment and foresight in investing my money in patent rights, because I would have gotten a return from them had I been able to close the Marseilles deal.

The jury will readily recognize the parental care I had for my two said business infants, one the offspring of my business judgment—the sewing machine attachment—and the other the offspring of my very brain, a patent which I had

myself invented; the jury will readily recognize the parental agony (I flag the Docs) from a business point of view I suffered, and from being separated from these children of mine, (I flag the Docs), these business products of my brain and business judgment, whom I knew, whom I daily knew when I was in "Bloomingdale," were being starved to death, were dying, because, like real people, live children, they only had a limited number of years to live, seventeen years being the life of a patent; I need not expatiate to the jury what I went through as a business man, and as an inventor, *agonies,* and that is not too strong a word, I assure the jury, under oath, for what I suffered from this business agony, this business tragedy—it is nothing else. I have refrained from touching on this before in this long deposition—I did not want to appear to work on the sentiments or emotions of the jury, and I do not want to now, but it is absolutely necessary for me to show that I only escaped from "Bloomingdale" because I *had to;* it is necessary for me to show that, unless I am willing to allow my reputation as a man of honor to be smirched, and I say, and my record stands for it, that honor is more with me than money or success or anything else, and I would rather have poverty and an honorable name than riches and rascality. My various acts and utterances on paper in every publication prove that to any honest and intelligent mind; and it is a very dear and precious thing to me as a man of honor, it is the dearest thing to me on God's earth. It is dearer to me than the fact that I am an American citizen; it is the dearest possession that I have got that I have an

unsmirched honor, unsmirched by the record, unsmirched *on* the record, proved to be unsmirched on the record of the fifty years coming the 10th of October, 1912; for that reason I want the jury thoroughly to understand the temptation I was under to compromise if the dollar cut any actual ice in my scheme of existence when opposed to what I thought was right; the jury will remember that my patents were dying daily when I was thrown into "Bloomingdale," the jury will remember that I was offered this Marseilles paving, the paving of a certain portion of the streets of Marseilles, before I was hurled into "Bloomingdale," and within a year after my being lodged in that den of vice and iniquity—its proprietors are vicious; I do not mean that vice takes place in "Bloomingdale" — its proprietors — the said "Forty Thieves of Bloomingdale"—are vicious, and what they own is vicious thereby; they are proprietors of a den of iniquity because *they* are iniquitous themselves on the record in turning me into a galley slave, and in robbing me of thousands of dollars a year as aforesaid—within a year after my waking up and finding myself in a madhouse for life on a perjured charge of lunacy, the sewing machine attachment, that sewing machine adjustment owned by the said Self-Threading Sewing Machine Company reached fruition, and was adjusted to the Singer Machine, as aforesaid, which fulfilled the conditions offered me, laid down to me by the London capitalists, that they would give me one hundred and fifty thousand dollars for the rights of the British Isles, possibly the British Colonies also thrown in; the jury will see the terrible temptation I was under

from the very day I got into "Bloomingdale" to get out in any way I could, even at the price of "hush up" aforesaid, offered to me by the Ambassador of the other side; nothing but a sense of duty—iron-bound and rock-ribbed—held me in that cell when the offer was made to me that I could get out of it: the doors would swing open, swing open with the knowledge of Dr. Lyon, but quietly; not to the knowledge of the press, not to the knowledge of the Medical Profession, there was a seal to be placed on my lips forever—hideous as that proposition was, it was made to me, and nothing, I respectfully submit to this Court and Jury, but a certainly working sense of duty, a mobilized sense of duty, enabled me to resist that offer; that offer was made years before my escape; even after I was given the privilege of walking about, I did not escape until eighteen calendar months, there or thereabouts, to be absolutely exact, seventeen months; I was given permission to walk about alone in June, there or thereabouts, 1899, and I escaped Thanksgiving Eve, 1900, seventeen months later. The jury can well imagine that when I was walking the by-ways and hedges of Westchester County, when I was climbing the mountains, or rather the certainly high hills of that section of Westchester, the temptation to keep on climbing presented itself more than once, climbing towards the South, climbing for liberty and home. "Home, Sweet Home," so to speak, hummed itself in my ears in the breezes, in the summer's zephyrs and wintry blasts; it rode wintry blasts and whispered to me (I am telling the truth), "You are a damn fool to stay here"; that was the way the temptation came to

me—"You are a damn fool to stay here; walk away; you have got the strength to do it; keep on moving"; and I never in my life had a severer temptation, I am frank to say, than to resist the whispers and yells of the said temptation. And yet I did it, on the record. I did not go until Mr. Frost made his little "break," until Mr. Frost was as good as his name, and threw a *frost* into my affairs, threw a very bad, hard, black frost in my affairs, with the best intentions in the world. Frost is an old college classmate of mine, and I have nothing but the kindest recollections of our acquaintanceship. He used to tutor me; he taught me law and coached me when I was "cramming" for examinations, and we never had so much as a hard word between us, Frost and I, so I absolve him from an innocent "break" in this record. Furthermore, this parole that Dr. Lyon gave me was a parole with a string to it. It was just exactly like a cheque which a highway robber forces a citizen to draw for him at the point of a pistol, and then says, "I rely on your honor not to stop the payment of this cheque between now and noon tomorrow, when I let you go." The ethics in both situations were identical. I had been kidnapped by Stanford White, perjured into "Bloomingdale." I was up against a very tough proposition. I was in very malodorous company through no fault of mine. They were holding me contrary to law just as much so as though they were actually brigands, professional brigands, *honest* brigands, frankly admitting they were brigands, instead of the double-faced brigands that they are, pretending that they are pillars of the Church and State and Finance. I was absolutely with-

out any standing in law; I had been deprived of my rights and rendered a dead man, rendered *civiliter mortuus*—civilly dead. An incompetent person or lunatic is civilly dead. He has no rights; he cannot transfer property, and he cannot vote and cannot have his liberty, as in my case. He must be locked up and robbed daily for life. I knew that state of affairs and I had tolerated it for nearly four years—three years, eight months and some days—and at the risk of my life, and at the possible permanent injury of my health, *for I still have an affected spine, as the record shows.* This was no more a parole in the honest sense of the word, in the real sense of the word, than a cheque which is given at the point of a pistol is a cheque in the honest sense of the word; it is not the intentional passing of money from one party to another. The law recognizes that anything which is given "under duress" is illegal and has no binding force whatever. A cheque given under duress, under the pistol point, is illegal. A man can stop it. That is what I mean by illegal. It is an illegal way of getting a cheque. *A parole given under duress is illegal. It is an illegal way to get a parole, to put a man in such a hole that he will give a parole, to get a little fresh air without a keeper's shadow in front of him every step he takes.* I, as a lawyer, knew that this parole that I gave was absolutely worthless; it had no binding effect; that the law did not expect me to keep it; that the Law said more; the Law said: "You are committing a fraud if you keep this parole one day longer than you are sure that you are able to get out of 'Bloomingdale' and show up this iniquity, or at least one

day longer than you begin to fear that you will jeopardize this aforesaid sureness of getting out, and turning on the lights, and showing the iniquity that has taken place in your case, and *will* take place unless checked by you—on the evidence, because nobody in New York has ever brought an action against 'Bloomingdale' for damages that has ever been in it." As far as I know, nobody ever has made a move. Although I knew that this parole was worthless, yet I was held by that parole for seventeen months on the record in spite of the whispers of freedom and home and happiness and the Sunny South. *That shows whether I did what I could to oblige Dr. Lyon, and not disappoint him.* But there was something more important to me than even my own honor. There is one thing and that is that *injustice shall not rule:* and if it were necessary for me—I frankly say—to lose my reputation, to be bracketed with any of the biggest criminals that ever lived—if it were necessary for me to pay that price—*without committing the crime be it well understood*—but if I were to be maligned and misunderstood and written about in history as one of the biggest criminals, I would be willing to pay that price *if that were the only price which could put injustice in law out of business,* I would be willing to sacrifice my reputation, which is the dearest thing to me, really dearer than anything, dearer than life, *but one thing, and that one thing is Ideality—is the greatest good for the greatest number, is the absolute antagonism and death in the last ditch opposed* to wrong-doing and injustice—and for that I will sacrifice everything, even my reputation, if it is

necessary. I won't sacrifice that like a fool, but I would sacrifice it if I could get a sure return in the wiping out of those Lunacy Laws, *if being understood all the time that I do not have to commit any crime*—I am simply *accused of* being a criminal. I have to say that, because otherwise I would be accused of "having broken my parole," I would just as soon be accused of having stolen a man's watch, or pocketbook, as being accused rightfully and honestly of breaking a bona fide military parole. Amongst soldiers a parole is given by one honorable foe to another, but that is among honorable foes, not among b[illegible]orable men opposed by footpads, brigands and [illegible]es, as I have been by the "Forty Thieves of Bloomingdale,"* aforesaid, *and robbed of twenty thousand dollars* by that gilded and well-groomed gang of prominent New Yorkers and pillars of the Episcopal and Roman Catholic Church; Cornelius N. Bliss was the most prominent Roman Catholic and devout son of the Church; Elbridge T. Gerry, as I remember, is an inveterate plate-passer, and Joseph H. Choate is an Episcopalian of quite Bishop-like proportions and rotundity. I do not wish to be understood as meaning any disrespect to Bishops when I say this. In a word, this parole was a farce. I got it out of Dr. Lyon on a bluff, so to speak, I bluffed him. I knew from the dastardly way Ex-Senator David B. Hill had left me to rot in "Bloomingdale," that I could not get a New York lawyer to touch my case unless I got

*Plaintiff-in-error's ironical phrase for the Board of Governors of "Bloomingdale," in his satirical history of New York, entitled "Four Years Behind the Bars of 'Bloomingdale,' Or, The Bankruptcy of Law in New York," published in 1906.

his ear outside the walls of my cell. A hint is as good as a kick to me. Turned down once is turned down forever, as far as I am concerned on any good proposition. So I gave up all idea of having anything to do with lawyers by letter or third parties until I got outside of my cell and could talk to them at Valhalla,† as I did later. But I made a bluff to Dr. Lyon, and when he asked me, as he did just before the 1899 proceedings, asked me if I would go down to see the jury in New York City, and I told him I was physically incapacitated from doing it—*physically—I knew that my presence before that jury would "blow the gaff," would give away the game, and I could walk out of the court a free man.* They, the Chanler family, knew that as well as I did. That is why they set the proceedings twenty miles away. I *"banked" on this fear of Dr. Lyon's, and others,* that I would by hook or crook get before that jury. So that, *although* I *told* him I was *not able to get there, yet I knew that fear* was so chill and deadly that *it* might carry a *bluff,** and I was going to risk it. So I said, in effect, "Dr. Lyon, I am heartily sick of seeing the shadow of my keeper blotting the earth's surface in front of me when I parade these grounds, and I do not propose to have any more of it, and if

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†Three miles from White Plains—where "Bloomingdale" is situated.

*The fear that I *was*—after all—*able* to get there—the bluff consisting in assuming that plaintiff-in-error *could* get to court, and *not* that he could *not*. That he *could*—by hook or crook—get a lawyer who would bring *habeas corpus* proceedings—*not* that he was marooned and utterly cut off from all communication with the outer world. It was no bluff that plaintiff-in-error was confined to his bed, unable to walk and had been for three weeks, since Dr. Lyon so stated, *supra*, p. 105 of this Brief.

you don't give me permission to walk without a keeper, I will bring habeas corpus proceedings."

I knew thundering well I could not do any such thing; it was a bluff of the rankest kind, a regular poker bluff, a four-flush. I had no way of bringing habeas corpus proceedings, but I knew *they* were *afraid* I *might* do it by some hook or crook. Thereupon Dr. Lyon pondered for some seconds and said, "Very well, you may if you promise to come back." I promptly said, "I will," and I mean now to "come back" and look over "Bloomingdale" so soon as they cleanse the filthy Lunacy page of the Statutes, of the Statute Books of the Empire State, and it is safe for a white man and honest citizen of North Carolina to present himself in New York without danger of being arrested for life and robbed to the tune of twenty thousand dollars a year,† and then I will "come back."

I hope I have said enough to show that I was willing to risk my life, to practically sacrifice my patents—my property in the Self-Threading Sewing Machine and Patent Paving which I invented—and to be daily bled to the tune of one hundred dollars a week, to suffer all that for the sake of honor, and for the sake of the people, for the sake of being able to save laymen and laywomen being hurled into "Bloomingdale" on these bogus Lunacy Laws. That is why I broke my "parole" falsely so-called, for I never gave a parole in the true sense of that word, and this is all borne out

†SYNDOCHDOCHE. *For five thousand dollars a year for four years;* as appears from the remark in the next paragraph—"Daily bled to the tune of one hundred dollars a week"—for four years would equal twenty thousand dollars.

†Stenographer's error for "Synecdoche."

by Dr. Lyon's words: "He is a very honorable man"; and that was said after two years knowledge of me in "Bloomingdale"; *he had not met me that afternoon for the first time.*

Mr. Duke: So much of the foregoing answer as is argumentative is excepted to as illegal, and all of the answer which is practically a repetition of what has been heretofore stated in the deposition is excepted to as uselessly encumbering the record and consumption of valuable time.

Mr. Chaloner: My only excuse is that my client's interest is in jeopardy here unless thoroughly safeguarded. This is the first time that the question of parole has ever come up. I am not criticizing the remarks of the learned counsel of the other side; I am simply defending my client in this respect and without any wish to encumber the record.

Adjourned to Thursday, December 28th, 1911, at 3:00 o'clock P. M.

Chaloner says above: He gave up all idea of having anything to do with lawyers by letter or third parties "until I got outside of my cell and could talk to them at Valhalla, as I did later." How much later? SOME EIGHT OR NINE MONTHS LATER. He did not recover sufficient strength to walk the eight miles from White Plains to Valhalla and back—four miles there and four miles back—until after January first, 1900, as a glance at the excluded Deposition will prove. Chaloner then goes on to show how he managed to get this very rare privilege of "parole" out of Dr. Lyon. He,

in fact, says he "bluffed" it out of Dr. Lyon, relying on the dread that Dr. Lyon felt lest he, Chaloner, should get before a jury in New York, and thereby "walk out of court a free man." He says he "knew *that* fear was so chill and deadly that it might carry a bluff and I was going to risk it." So he said to Dr. Lyon that if he did *not* give him parole he "would bring *habeas corpus* Proceedings," though he knew there was no possibility of his doing so. He had already replied to Dr. Lyon's question as to his going to the 1899 Proceedings "twenty miles away" in New York City that he "was physically incapacitated from doing it." Therefore, it was a "bluff" to threaten to bring *habeas corpus* Proceedings under any conceivable conditions *seeing that he could neither walk nor communicate freely with counsel.*

How could said Choate truthfully make said statement that from the above passage "it abundantly appears that he absented himself from the 1899 Hearing by his own choice, being free to attend and to consult counsel?" But it throws, we respectfully submit, light upon how the learned Judge Mayer came to say: "And it further appears from Chaloner's deposition—that he absented himself from the 1899 Proceedings by his own choice." The learned Judge not having time to read some twenty pages from said excluded Deposition, very naturally believed what said Choate had printed about it in his brief.

(R) Mayer, J., continues: "But the propriety and sufficiency of the notice as matter of law are no longer open to question," p. 188, fol. 368.

Fraud opens everything *for revision.* As has been shown, Chaloner has not yet had his day in court. Therefore the question of fraud has never yet been passed upon. *U. S.* v. *Throckmorton, supra.* Also *Chanler* v. *Sherman,* 162 Fed. Rep. *The Parallels, supra.*

First reversal of the United States Circuit Court of Appeals by the United States District Court. *Third reversal of this United States Circuit Court of Appeals by itself.*

(S) Mayer, J., continuing: "Finally in regard to the failure to give Chaloner notice of the resignation of Butler and the appointment of Sherman as Committee, it appears that there is no Statutory requirement of notice in such a proceeding and it would seem that notice to the Committee of a proposed removal is the only notice required," p. 188, fol. 368.

A similar case concerning notice of the appointment of a Committee is found in the leading Insanity case of *Evans, Committee,* v. *Johnson,* 23 L. R. A., 737; *West Virginia Supreme Court of Appeals,* 1894 (Indexed in The Nineteen Points of Law, *infra*). Brannan, P., said: "There is abundant authority for this position. *Even though the statute be silent as to notice, yet the common law steps in and requires it*" (citing numerous leading cases).

(T) Mayer, J., continues: "But, if notice were required, the failure to give it is an irregularity which must be dealt with by the State Court of original jurisdiction," p. 188, fol. 368.

From not giving Chaloner notice in the 1897 Proceedings and not giving him opportunity to appear and be heard in the 1899 Proceedings the State Court of "original jurisdiction" *never acquired jurisdiction over Chaloner. Windsor* v. *McVeigh,* 93 U. S.; *Simon* v. *Craft,* 182 U. S.; *U. S.* v. *Throckmorton,* 98 U. S., *supra;* and *Chanler* v. *Sherman,* 162 Fed. Rep. *The Parallels, supra.* Thirteenth reversal of the United States Circuit Court of Appeals by the United States District Court. *Fourth reversal of this United States Circuit Court of Appeals by itself.*

(U) Mayer, J., continues: "Our conclusion is that the judgment of the New York Court was not a void judgment and it must remain valid until reversed or set aside by the Courts of New York," p. 189, fol. 368.

Chanler v. *Sherman*, 162 Fed. Rep. *The Parallels, supra.* Thirteenth reversal of the United States Circuit Court of Appeals by the United States District Court. *Fifth reversal of this United States Circuit Court of Appeals by itself.*

(V) Mayer, J., continues: "So, too, even if some of the requirements of the statutes had been omitted or neglected, or insufficient evidence of insanity was adduced, relief must be obtained in the Court which appointed the Committee," p. 189, fol. 368. *Windsor* v. *McVeigh, Simon* v. *Craft, U. S.* v. *Throckmorton, Chanler* v. *Sherman, supra. The Parallels, supra.* Thirteenth reversal of the United States Circuit Court of Appeals by the United States District Court. *Sixth reversal of this United States Circuit Court of Appeals by itself.*

(W) Mayer, J., continues: "But, however this may be, we think that this Court has not jurisdiction to set aside or annul the judgment of the State Supreme Court rendered in a Proceeding in which it obviously has jurisdiction," p. 189, fol. 369. *Windsor* v. *McVeigh, supra; U. S.* v. *Throckmorton, supra; Simon* v. *Craft, supra; Chanler* v. *Sherman, supra. The Parallels, supra.* Thirteenth reversal of the United States Circuit Court of Appeals by the United States District Court. *Seventh reversal of this United States Circuit Court of Appeals by itself.*

THE NINETEEN POINTS OF LAW

Supported by Argument and Authority.*

THE LAW IN THE CASE.

The law in the case covering the aforesaid nineteen points (pp. 14-25) is as follows, to wit:

POINT 1.—The commitment proceedings were void for the following reasons, to wit: There was fraud and trickery in luring the plaintiff, John Armstrong Chaloner, a citizen of Virginia, into a foreign jurisdiction for the purpose of depriving him of liberty and property on a false charge of insanity.

It will be remembered that plaintiff was lured by Mr. Stanford White and a physician, who visited plaintiff in plaintiff's home in Virginia in February, 1897, was lured by Mr. Stanford White into the State of New York on the plea of taking "a plunge in the Metropolitan whirl" on the ground that plaintiff needed a change. That so soon as plaintiff reached New York City steps were taken clandestinely and under false pretenses by plaintiff's said brothers, Messrs. Winthrop Astor Chanler and Lewis Stuyvesant Chanler, two of the said petitioners, that steps were taken clandestinely by said parties working through the said physician who accompanied Mr. Stanford White, aforesaid, to the plaintiff's said home in Virginia; and also working through Dr. Moses Allen Starr, aforesaid; and finally also working

*From the Trial Brief *Chaloner against Sherman*. Printed and copyrighted 1905.

through said Mr. Stanford White himself, who proposed, through a third party, that plaintiff should appoint said Mr. White plaintiff's power of attorney; that steps as aforesaid were taken by plaintiff's said brothers, Messrs. Winthrop Astor Chanler and Lewis Stuyvesant Chanler, to have plaintiff declared, and locked up as, a lunatic. The following two cases given *in extenso* along with the following five cases abstracted substantially sustain our said contention.

Carpenter v. *Spooner*, 2 Sandf. (N. Y. Supr. Ct. Rep.), 717.

This Court will not sanction any attempt, by fraud or misrepresentation, to bring a party within its jurisdiction. Where a party having been induced by a false statement to come within the jurisdiction of the Court for the purpose of effecting service upon him, was then served with a summons and complaint in an action in this Court, the service was, on motion, set aside.

May 25th, 1850.

Appeal from an order made at chambers, setting aside the service of a summons, with costs. The facts appear in the decision.

A. CRIST, for the plaintiff.

SPOONER, for the defendant.

"THE COURT.—This was an action for libel. Both parties reside in Brooklyn, and out of the jurisdiction of this Court. The plaintiff, however, was desirous of having the case tried in this Court. In order to bring the cause within its jurisdiction, it was necessary that the summons should be served within this City. A clerk of the plaintiff's attorney, therefore, procured a person to write to the defendant, requesting him to call on the

writer next day, in this City. The defendant came, in order to comply with the request in the letter, and when he was leaving the ferry boat was met by the person who had written the letter, and was served with the summons in this action. The whole proceeding was a trick, for the purpose of giving this Court jurisdiction.

"The excuse alleged by the plaintiff is, that he had been so libeled by the defendant and others in Brooklyn as to raise the public feeling there against him, and he could not hope for a fair trial in the County of Kings. If so, there is a sufficient remedy by moving the Supreme Court; and we have no doubt, it will, on application, be properly applied. An application was made to set aside the service of this summons, and we think it was well founded. This Court will not sanction any attempt to bring a party within its jurisdiction by fraud and misrepresentation. And where by false statement or fraudulent pretense, a party is brought within the jurisdiction, and there served with process, the service will be set aside. We recollect a case where a party was entrapped into this State out of another State, and then served with process, and there the service was set aside.

"If a party who is not within the jurisdiction voluntarily come within it, he thereby becomes amenable to the process of the Court, but not unless he comes voluntarily. This Court will not countenance any proceeding of the nature adopted in this case.

"Appeal dismissed with costs."

The Olean Street Railway Company, Respondent, v. *The Fairmount Construction Company, Appellant,* 55 App. Div., Supreme Court, 4th Department, 1900, p. 292.

ADAMS, P. J.: Opinion in full:

"The defendant, The Fairmount Construction Company, is a foreign corporation organized and existing under the laws of the State of New Jersey.

"At the times hereinafter mentioned Clarence P. King was the defendant's President and resided in the City of Philadelphia.

"The plaintiff is a domestic corporation with its place of business in the City of Olean, Cattaraugua County, where its President, Wilson R. Page, resides.

"The summons herein was issued and the complaint verified by Page on the 25th day of May, 1900, and on the twenty-ninth day of June, following, they were personally served within the State upon John Forbes, the appellant's co-defendant.

"At this time Clarence P. King was claiming that the plaintiff herein was indebted to him in the sum of $674.44 for money loaned to the plaintiff on the 2nd day of December, 1897, and was corresponding with Page, as President of the plaintiff, with a view to having his claim adjusted and paid.

"In answer to a letter demanding payment, Page wrote King that if he would meet him in New York, the latter part of the week of July 15th, 1900, he thought they could 'come to some conclusion.' To this request King assented, and suggested the seventeenth day of July as the day for the meeting, whereupon Page again wrote King that he would meet him at the Astor House at twelve o'clock, noon, on Saturday, July twenty-first.

"The parties met at the time and place last mentioned and King presented his claim, which Page said he could not settle until he had seen a former Treasurer of the plaintiff, and while conversing in regard to the matter a process server walked in and served the summons and

complaint in this action upon King, and thereupon the interview between the parties terminated.

"A motion was thereafter made to vacate such service upon the ground that King was induced by some scheme or device to come within the jurisdiction of the Courts of this State in order that service of process might be obtained upon him; and it must, of course, be conceded that if the truth of the appellant's contention were clearly established, service secured by such means should not be permitted to stand. For the Court will not sanction any attempt by fraud or misrepresentation to bring a party within its jurisdiction (*Snelling* v. *Watrous*, 2 Paige, 314; *Carpenter* v. *Spooner*, 2 Sandf., 717; *Metcalf* v. *Clark*, 41 Barb., 45; *Beacom* v. *Rogers*, 79 Hun., 220).

"The plaintiff's President, however, denies that he invited Mr. King to come to the City of New York for the purpose of obtaining service upon him. On the contrary, he declares, that when he wrote King, suggesting that city as the place of meeting, he did not even know that he was the defendant's President, and there are some circumstances in the case which, to some extent, give color to the statement; but, upon the other hand, it is a somewhat remarkable coincidence that the process server should have appeared upon the scene just as the two Presidents had opened negotiations for a settlement of the demand which King was endeavoring to have adjusted, and that as soon as the process was about to be served Page announced that he could do nothing in the direction of settlement until he had seen a former Treasurer of the plaintiff.

"Assuming, however, that the coincidence to which we have referred was purely accidental and not the result of any trick or device, as perhaps we ought, in view of the decision of the Special Term, the fact remains that the

defendant's President was induced to come within the jurisdiction of the Court at the suggestion of the plaintiff's President, and for the express purpose of adjusting a claim against the plaintiff which he had been assured by Page would probably then be adjusted. In these circumstances we think that good faith and a due regard for the proprieties of the case required of the plaintiff that when the negotiations for a settlement of the matter which brought the parties together, terminated, a reasonable opportunity should have been afforded the defendant's President to leave the city and state before any attempt was made to serve a summons upon him; and inasmuch as this was not done, the plaintiff ought not to be permitted to take advantage of a course of conduct which, if not amounting to actual fraud and deceit, was certainly equivalent thereto and would involve a breach of the confidence which King had reposed in the *bona fides* of the invitation of the plaintiff's President to place himself within the jurisdiction of the Court (*Allen* v. *Wharton,* 13 N. Y. Supp., 38; *Higgins* v. *Dewey,* 34 N. Y. St. Rep., 692).

"The order appealed from should, therefore, be reversed, and the motion to vacate the service of the summons and complaint granted."

All concurred, Williams and Laughlin, JJ., in result only.

A clerk in the office of plaintiff's attorney, after many fruitless efforts to serve the defendant, who resided in the State, but without the jurisdiction of the Court, wrote him, as though desiring a business interview at a place within the jurisdiction. Defendant attended and was served with a summons, which he moved to set aside. *Held,* per Ehrlich, J., the clerk was guilty of

trickery, from which his principal, though ignorant, cannot be allowed to gain any benefit.

"The decisions are uniform that such deceit vitiates the service of legal process, but if there were no precedent exactly in point the Court would not hesitate to make one of the case at bar."

Wyckoff v. *Packard,* 20 Abb. N. C., 420 (N. Y. City Court Special Term, 1887).
Snelling v. *Watrous,* 2 Paige (Ch.), 314 (1830).

A person, against whom an attachment had issued for his contempt in not answering in an equity suit, applied for discharge from his debts under the Insolvent Act. Plaintiff in the civil suit opposed the discharge, procured an order for his examination, and, on the close of it, served him with the attachment papers, which it had previously been impossible to serve.

Held, defendant's application to be discharged from arrest should be granted:

"Where a party has not in fact been guilty of any crime this Court will not permit the complainant to resort to any unfair and inequitable method to enforce the process of attachment. It is very evident that the proceeding before the recorder to procure the personal attendance of the insolvent was a mere device to enable the complainant to arrest him on this attachment. I cannot allow a party thus to abuse the process or the remedial power of any Court." Per Wolworth, Ch.

N. Y. Super. Ct. 1837 Gen'l Term.
Baker v. *Wales,* 14 Abb. Pr.. Rep. (N. S.) 331.

On appeal from order vacating and setting aside ser-

vice of summons based on evidence that the defendant was induced to come within the State to settle the claim, that after an unsuccessful negotiation he was served at the attorney's office with a summons previously prepared and then and there filled out, and that plaintiff's attorney kept summonses in his office for that purpose, *held*, per Freedman, J., the evidence sustained the finding "that deceit had been used for the purpose of bringing defendant within the jurisdiction of this court—the service of the summons was therefore properly vacated and set aside (*Carpenter* v. *Spooner*, 2 Sandf. 716)." Order affirmed. All concur.

Lagraves Case, *Ib.* p. 333, note (Supreme Ct. 1st District, Spec. Term 1873) *held*, "a party brought within the jurisdiction by requisition on a criminal charge, made with design to get him here so as to hold him to bail in a civil action, is not liable to arrest in a civil suit brought *by those at whose instance the criminal proceeding was started.*"

Metcalf v. *Clark*, 41 Barb. 45 (1864.)

Where it appears that the defendant "was, through the instrumentality of plaintiff or of those acting in his behalf, inveigled into this State for the purpose of effecting service upon him of the summons in this action," *held*, proper to vacate service of the summons and all subsequent proceedings based thereon. Per Bockes, J.: "He was enticed within the jurisdiction of the court for a purpose to which the court will not give its sanction—The proceeding was a trick."

POINT 2.—The said proceedings were void for the following reason, to-wit: There was fraud and trickery upon the part of the Medical Examiners in Lunacy in

the pay of the petitioners, who, in order to keep plaintiff in ignorance of the acts of the said petitioners, and that he should have no knowledge of the impending action, upon the part of the said petitioners, o deprive him of liberty and property on the said false charge of insanity, pretended to have an interest in trance-states and requested plaintiff to enter a trance in order, as they alleged, that they might for purely scientific reasons, note the action of a trance. Plaintiff, to oblige said Examiners in Lunacy, who never announced themselves as such, but kept said fact strictly in the background, and appeared in the guise, one of a surgeon, the other of an oculist—entered said trance. While in said trance, plaintiff made some remarks. Said remarks form the main charge against the sanity of the plaintiff. Said remarks were made wholly without the slightest ratiocination or volition upon plaintiff's part, except that, to oblige the said surgeon and the said "oculist," he permitted himself to enter said trance and while in said trance, for purely scientific reasons, temporarily surrendered his reasoning and speaking faculties to the influence of said trance. The said medical men expressed themselves as interested in said trance-phenomena, and thereupon took their departure. They visited plaintiff on one other occasion when the trance was resumed. Thereupon after a discussion of trances in general and plaintiff's in particular, said parties depa ted. A short time thereafter the "oculist" appeared and brusquely informed plaintiff, who was at his rooms at a hotel in New York City, at which he was temporarily sojourning, and in which rooms the said conversations had taken place, that he was insane and that he must accompany said "oculist," who now, for the first time, disclosed his identity, and said that he was a Medical Examiner in lunacy employed by the said petitioners. Plaintiff laughed at

the allegations of insanity, and requested said examiner in lunacy to state the grounds upon which said allegation was based. Said medical man thereupon said, "The things you said in the trance." Plaintiff laughed at this, whereupon said medical man said: "Don't you believe the things you said in the trance?" Upon which plaintiff replied with an emphatic negative. Plaintiff declined to accompany said medical man, whereupon, some twenty hours later, March 13th, 1897, plaintiff was arrested by two policemen in plain clothes in his said rooms, and taken by them to the Society of the New York Hospital at White Plains, Westchester County, New York, falsely known as "Bloomingdale," and there incarcerated for three years and eight months in a barred cell, on a false charge of lunacy; until Thanksgiving eve, 1900, when plaintiff escaped and fled to Philadelphia. Plaintiff was, of course, no more legally accountable for what he said in said trance, under the said circumstances, than he would have been legally accountable for remarks made in his sleep.

POINT 3.—The said proceedings were void for the following reason, to-wit: There was fraud upon the Court, as well as upon the party, upon the part of the said Medical Examiners in Lunacy. Said medical men doctored plaintiff's trance utterances; that is to say, said medical men divided said trance utterances into two divisions. The first division said medical men took out of the said trance utterances, and placed by themselves. The second division said medical men mixed; leaving part to be guessed at by the Court, and taking the other part out of said trance utterances. The parts in both instances which were taken out of the trance utterances were stated by said medical men as having been said by plaintiff, leaving it to be inferred that

said parts were not parts of said trance utterances, but were plaintiff's own views which, upon the evidence, it being admitted by said medical men that plaintiff "frequently went into a trance-like state," upon said evidence they emphatically were not. Furthermore: Said medical men also swore that plaintiff was "violent" and "dangerous," two allegations profoundly false, and totally disproved by plaintiff's conduct at the time, and during the three years and eight months he was incarcerated at White Plains. In the proceedings in 1899 not one word was said about plaintiff's being dangerous or harmful to himself or anybody else, not one word even by the paid witnesses of the other side, and plaintiff had then been for over two years under observation.

POINT 4.—The said proceedings were void for the following reasons, to-wit: There was perjury upon the part of the said petitioners who, although at the time the said falsely alleged acts on the part of plaintiff were falsely sworn, of their own knowledge, by said petitioners, to have occurred at plaintiff's home in Virginia, said petitioners were widely separated from plaintiff; one of the said petitioners being in New York, one of the said petitioners being in New England, and the third of the said petitioners being in England.

POINT 5.—The said proceedings were void for the following reason, to-wit: There was fraud upon the Court as well as upon the party, upon the part of the said petitioners. For the foundation of the commitment proceedings had in New York City, March 10, 1897, was the sworn testimony of the said petitioners who—with the exception of the said medical men—were the only witnesses sworn at said proceedings; and the Court relied upon the truth of the oaths of said petitioners that

their said allegations against the plaintiff's sanity were *of their own knowledge*, whereas they were emphatically the reverse.

POINT 6.—The said proceedings were void *in toto*, for the reason that owing to the fact that plaintiff was kept away from Court by perjury and trickery, as aforesaid, there was no real contest.

POINT 7.—The said proceedings in 1899 were void *in toto*, for the reason that owing to the fact that plaintiff, by contrivance, was kept away from Court, there was no real contest. The said contrivance being that instead of setting the hearing in the County Court House of Westchester County, at White Plains, where plaintiff was confined, said hearing was set in Manhattan, over twenty miles away. This was done to keep plaintiff out of Court, for said petitioners were in a position to know of plaintiff's physical disability, aforesaid, at the time. Whereas had said hearing been set at White Plains Court—less than a mile from plaintiff's cell—plaintiff could have been carried there in a carriage without danger of injury to him; or, if that was not done, committees of the said Commission and jury could, in an hour, have visited him and examined him.

POINT 8.—The said proceedings in 1899 were void for the following reasons, to-wit:

(a) The only evidence of plaintiff's alleged incompetency came from the said two medical men in the pay of the other side, and from the said Medical Superintendent of the Society of the New York Hospital. Said evidence was, on the evidence strictly of two varieties, to-wit, frivolous, or perjured. The basis of the allegations of the two said medical men against plain-

tiff's competency and sanity was the aforesaid trance. At the *special request* of said medical men plaintiff, for scientific reasons, entered a trance in order that he might hear the comments thereon of two medical men who alleged that they were interested in trances. The only time that plaintiff entered a trance during his stay of three years and eight months at White Plains was in the presence of said medical men. Plaintiff did not hesitate to do this, although the doing of it had already got him in trouble, for the reason that plaintiff being a lawyer knew his rights, and knew that he had a legal right to enter a trance. Said medical men had deliberately lied to plaintiff. Said medical men had deliberately deceived plaintiff. Plaintiff upon the appearance of said medical men, had at once asked them "Do you represent anybody?" To which they both promptly replied that they represented no one. That the reason for their visit was that a friend of plaintiff's, whom they voluntarily and without questioning upon plaintiff's part, named, had requested them to call and see plaintiff as said friend was anxious that plaintiff should get out of "Bloomingdale." Plaintiff later communicated with said friend and found that there was not a word of truth in said medical men's assertion touching said friend's share in said medical men's visit. It developed later that said medical men were sent by the other side to obtain testimony for the other side at said proceedings in 1899. The portion of said medical men's said testimony concerning plaintiff's said trance is, of course, frivolous, from a legal standpoint; a party having—under the said circumstances—a legal right to enter a trance.

(b) A specimen of said medical men's evidence had to do with matter touched on in a letter attached to plaintiff's present affidavit, which letter plaintiff had written

to a legal friend on March 26, 1900, requesting him to procure counsel for plaintiff in order to institute *habeas corpus* proceedings to procure plaintiff's release. Plaintiff in said conversation with said medical men, touched on in said letter, strongly censured the parties directly or indirectly interested in holding plaintiff a prisoner on a false charge, and under void proceedings. Said medical men to whom plaintiff had spoken as freely upon said topics as in said letter, palpably—as will appear upon reading said medical men's sworn evidence at the said proceedings in 1899, and as will appear upon reading in connection therewith plaintiff's said attached letter—said medical men palpably and in a most barefaced and preposterous fashion garbled the substance of said conversation and of said letter. The balance of material allegations are on a par with above for barefaced perjury. Lastly, said medical men palpably perjured themselves on the witness stand at said proceedings in 1899, by swearing in effect that plaintiff was not only hopelessly insane and incompetent, but that plaintiff was increasingly so, and that plaintiff's falsely alleged insanity and falsely alleged incompetency would increase with the lapse of time; all of which palpably perjurious allegations have been abundantly disproved by plaintiff's acts since said trial, and by plaintiff's trial November 6, 1901, in the County Court of Albemarle County, Virginia, the same being a court of record, in which county plaintiff's home is; at which trial plaintiff was declared both sane and competent; said trial having been instituted by a neighbor, upon plaintiff's reappearance at plaintiff's said home after plaintiff's said escape, with a view to ascertaining plaintiff's sanity and competency; plaintiff at this time standing under the said void New York proceedings, in the light of an escaped lunatic, whom it was dangerous to allow at large. Plain-

tiff has since lived continuously at his said home in Albemarle County, Virginia, undisturbed.

And all of which plaintiff-in-error offered to prove on the trial in the lower Court, but was barred from doing so by the erroneous rulings of the learned Trial Judge (Folios 57-108-110, 111-112.)

RES ADJUDICATA AND COLLATERAL ATTACK.

Right to attack Judgment Collaterally.

I.

In equity, a judgment may be attacked and impeached, by proceedings to prevent enforcement, upon the ground that it is clearly "against conscience." (pp. 194-198, Trial Brief.)

Marshall v. *Holmes*, 141 U. S., 589, 596. Opinion by the learned Mr. Justice Harlan.
Arrowsmith v. *Gleason*, 129 U. S., 86, 89. Opinion by Mr. Justice Harlan.

Proof that the party nominally bound by the judgment was, in fact, kept "away from Court" by trickery or fraud, will suffice as a ground for injunctive relief; proof of such a fact shows that the controversy was not substantial.

U. S. v. *Throckmorton*, 98 U. S., 616.
Reynolds v. *Etna*, 160 N. Y., 635, 652, 653.

The former adjudication and the litigation leading up to it "must be such not merely in name, but in fact and substance."

(*Ib.* citing 87 N. Y., 303; 137 N. Y., 259.)

II.

In Courts of law where equity powers are disclaimed the general rule is that a judgment may be impeached only by direct attack (*Drake* v. *N. Y. Sub. Co.*, 36 App.

Div., 275, 279; *Phenix Mills* v. *Miller*, 34 St. Rep., 999); BUT this rule is subject *to the following exceptions:*

(1) *Want of jurisdiction in fact may always be shown.*

Scott v. *MacNeill*, 154 U. S., 34.
Smith v. *Reed*, 134 N. Y., 568.
Matter of Killan, 172 N. Y., 547.

(2) *Fraudulent or collusive disregard of the rights of the party nominally bound by the judgment may be shown; the theory evidently being that his apparent assent or acquiescence was not a real and free act on his part.*

Mandeville v. *Reynolds*, 68 N. Y.

(3) *When the judgment attacked collaterally is not the judgment of the forum in which it is attacked, even the former litigation of jurisdictional issues is not necessarily conclusive, as it would be if such issues of fact were actually litigated and determined* as a basis of a judgment in the same forum.

Matter of Kimball, 155 N. Y., 62, 68.

But even in cases where Courts of general jurisdiction are vested with powers of confiscation or with power to adjudicate *in rem*, and the law provides that such jurisdiction be exercised only in cases where the person whose property is affected is civilly dead or politically outlawed, or legally non-resident, *the judgment in rem is not conclusive as a determination of the jurisdictional facts unless the person affected has, by due process of law, been summoned to appear and had a fair opportunity to be heard as to his status.*

Chapman v. *Phenix N. Bank,* 85 N. Y., 437.
Scott v. *MacNeill,* 154 U. S., 34.

At one time it was supposed to be the law that the Surrogate might practically confiscate a man's property, by adjudicating him to be dead and issuing letters of administration upon his estate (*Roderigas* v. *East River Savings Institution*), but this doctrine has been practically abandoned (172 N. Y., 557); since the U. S. Supreme Court held that it tended to deprive persons of property without due process of law.

Scott v. *MacNeill,* 154 U. S., 34.

It is the fact, not the adjudication thereof, which vests jurisdiction.

People ex rel. Gould v. *Barker,* 150 N. Y., 52, 57.
Overly v. *Gordon,* 171 U. S., 21, 22.

And the party to be concluded by a determination of facts jurisdictional, must appear to have had a substantial, and not merely a nominal opportunity to be heard; the issue must have been both "litigated and decided" in the former action (160 N. Y., 653).

(This closes the aforesaid excerpt from APPEAL BRIEF in *Chaloner against Sherman* to the United States Circuit Court of Appeals for the Second Circuit.)

We append hereto pertinent extracts from recent decisions, bearing upon the general propositions above outlined.

Matter of Law, 56 App. Div. 454, 457.

As the decree is limited in its binding effect to the thing which it operates upon, it remains open to be controverted as to all the grounds and incidental facts upon which it professes to be founded. (*Durant* v. *Abendroth*, 97 N. Y., 132.)

The want of jurisdiction, either of subject-matter or person, renders the judgment a nullity, and it may be attacked in any form, either directly or collaterally. (*Kerr* v. *Kerr*, 41 N. Y., 272; *Pennoyer* v. *Neff*, 95 U. S., 714.)

"Judgments of superior courts exercising general jurisdiction are attended by a presumption that they have been regularly and legally rendered, and when the record does not disclose that the court acquired jurisdiction it will be presumed until the contrary appears. (*Chenung Canal Bank* v. *Judson*, 8 N. Y., 254; *Pacific Pneumatic Gas Co.* v. *Wheelock*, 80 Id., 278; *Potter* v. *Merchants' Bank*, 28 Id., 641; *Galpin* v. *Page*, 18 Wall., 350.) But where such courts exercise a special statutory power not according to the course of common law, no such presumption obtains, and they may be attacked collaterally. (Steph. Dig. Ev. [Chase's ed.], pp. 97, 98, note, and cases cited.)

O'Donoghue v. *Boies*, 159 N. Y., 87, at 98.

Per O'BRIEN, J.:

"When a party interposes the judgment of a court as the foundation of his title or claim, the want of jurisdiction in the court to render the judgment may always be set up against it when sought to be enforced, or when any benefit is claimed under it by the party in whose favor it was rendered, or by any one claiming under him.

It is always open to the party against whom the judgment is offered to prove the want of jurisdiction in the court, even though such proof contradicts recitals in the record. In the case of judgments recovered in the courts of other States which are to be given full faith and credit here under the Federal Constitution, the record may be impeached for want of jurisdiction, even by extrinsic evidence, and the same is true with respect to domestic judgments. Whenever, therefore, a judgment is interposed as a claim or the foundation of a title, the party against whom it is offered may show that it is void, and, therefore, that the supposed record is not in truth a record at all. No court or judicial officer can acquire jurisdiction by the mere assertion of it, or by erroneously alleging the existence of facts upon which jurisdiction depends. If the court had no jurisdiction, it had no power to make a record, and the supposed record is not in truth entitled to the character of a judgment. These propositions have been settled in this court once for all in the case of *Ferguson* v. *Crawford*. (70 N. Y., 253). In the opinion of Judge Rapallo, which covers the whole field of discussion, the positions stated are sustained by a weight of argument and a wealth of illustration which leaves nothing further to be said on the subject. The statement of Judge Andrews in the case of *Risley* v. *Phenix Bank* (83 N. Y., 337) may also be referred to, where it is said: 'But a court authorized by statute to entertain jurisdiction in a particular case only, if it undertakes to exercise the power and jurisdiction conferred in a case to which the statute has no application, acquires no jurisdiction, and its judgment is a nullity, and will so be treated when it comes in question, either directly or collaterally.' These cases have been repeatedly approved and followed in this court as a correct expression of the law on the question of

jurisdiction. (*Craig* v. *Town of Andes*, 93 N. Y., 405; *People ex rel. Frey* v. *Warden, &c.*, 100 Id., 24; *C. C. Bank* v. *Parent*, 134 Id., 530; *Smith* v. *Reid*, Id., 571; *Beardslee* v. *Dolge*, 143 Id., 165; *Vials* v. *P. & M. R. R. Co.*, 123 Id., 455; *Bogart* v. *D. L. & W. R. R. Co.*, 145 Id., 287; *People* v. *Gardner*, 144 Id., 126; *Losey* v. *Stanley*, 147 Id., 560; *Warren* v. *Union Bank*, 157 Id., 259.)

"The want of jurisdiction to render the particular judgment may always be asserted and raised directly or collaterally, either from an inspection of the record itself when offered in behalf of the party claiming under it, or upon extraneous proof, which is always admissible for that purpose. There is but one solitary exception to this rule, and that is in a case where jurisdiction depends on a fact that is litigated in a suit and is adjudged in favor of the party who avers jurisdiction, then the question of jurisdiction is judicially decided, and the judgment record is conclusive on that question until set aside or reversed by a direct proceeding. (*Ferguson* v. *Crawford, supra.*)

* * * * * *

"While a court may acquire jurisdiction sufficient to exempt its judgment from collateral attack by deciding a disputed question of fact erroneously, it has never been held that it can acquire jurisdiction for any purpose by an error of law."

Ferguson v. *Crawford*, 70 N. Y., 253.

Chief Justice Rapallo said:

"He is sought to be held bound by a judgment when he was never personally summoned or had

notice of the proceeding, which result has been frequently declared to be contrary to the first principles of justice, and this is sought to be accomplished by means of a judgment entered upon forged papers. No principle of public policy requires or sanctions sustaining such a judgment.

"It is an elementary principle recognized in all cases, that, to give binding effect to a judgment of any Court, whether of general or limited jurisdiction, it is essential that the Court should have jurisdiction of the person as well as the subject-matter, and that the want of jurisdiction over either may always be set up against a judgment when sought to be enforced, *or any benefit is claimed under it."*

When we come to consider the effect of these authorities, it is difficult to find any solid ground upon which to rest a distinction between domestic judgments and judgments of sister States in regard to this question, for under the provisions of the Constitution of the United States, which require that full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State, it is now well settled that when a judgment of a court of a sister State is duly proved in a court of this State, it is entitled here to all the effect to which it is entitled in the courts of the State where rendered. If conclusive there it is equally conclusive in all the States of the Union; and whatever pleas would be good to a suit therein in the State where rendered, and none others can be pleaded in any court in the United States. (*Hampton* v. *McConnell*, 3 Wheaton, 234; Story Com. on Cons., Sec. 183; *Mills* v. *Duryee*, 7 Cranch, 481.)

But aside from this observation as to the effect of the authorities, an examination of them shows that our courts did in fact proceed upon a ground common to both classes of judgments. The reasons are fully stated in the case of *Starbuck* v. *Murray* (5 Wend. 148). In that case, which was an action upon a Massachusetts judgment, the defendant pleaded that no process was served on him in the suit in which the judgment sued on was rendered, and that he never appeared therein in person or by attorney, and this plea was held good, notwithstanding that the record of the judgment stated that the defendant appeared to the suit. Marcy, J., in delivering the opinion of the court, and referring to the argument that the defendant was estopped from asserting anything against the allegation of his appearance contained in the record, says: "It appears to me that this proposition assumes the very fact to be established, which is the only question in issue. For what purpose does the defendant question the jurisdiction of the court? Solely to show that its proceedings and judgments are void, and therefore the supposed record is not in truth a record. If the defendant had not proper notice of, and did not appear to, the original action, all the State Courts, with one exception, agree in opinion that the paper introduced, as to him is no record. But if he cannot show even against the pretended record that fact, on the alleged ground of the uncontrollable verity of the record, he is deprived of his defense by a process of reasoning that is to my mind little less than sophistry. The plaintiff in effect declares to the defendant—the paper declared on, is a record, because it says you appeared; and you appeared, because the paper is a record. This reasoning is in a circle. The appearance makes the record uncontrollable verity, and the record makes the appearance an unimpeachable fact." And again at p.

160 he says: "To say that the defendant may show the supposed record to be a nullity, by showing a want of jurisdiction in the court which made it, and at the same time to estop him from doing so because the court has inserted in the record an allegation which he offers to prove untrue, does not seem to me to be very consistent."

This is but an amplification of what is sometimes more briefly expressed in the books, that where the defense goes to defeat the record, there is no estoppel. That the reasoning of Marcy, J., is applicable to domestic judgments, is also the opinion of the learned annotators to Phillip's Evidence. (Cowen and Hill's notes 1st Ed., p. 801, note 551.) Referring to the opinion of Marcy, J., before cited, they say: "The same may be said respecting any judgment, sentence or decree. A want of jurisdiction in the court pronouncing it may always be set up when it is sought to be enforced, or when any benefit is claimed under it; and the principle which ordinarily forbids the impeachment or contradiction of a record has no sort of application to the case." The *dicta* of our judges are all to the same effect although the precise case does not seem to have arisen. In *Bigelow* v. *Stearns* (19 Johns., 41) Spencer Ch. J., laid down the broad rule that if a court, whether of limited jurisdiction or not, undertakes to hold cognizance of a cause without having gained jurisdiction of the person by having them before them in the manner required by law, the proceedings are void. In *Latham* v. *Edgerton* (9 Cow., 227), Sutherland, J., in regard to a judgment of a court of common pleas, says: "The principle that a record cannot be impeached by pleading, is not applicable to a case like this. The want of jurisdiction is a matter that may always be set up against a judgment when sought to be enforced or where any benefit is claimed under it." Citing *Mills* v. *Martin* (19 Johns., 33.) He

also says (page 229): "The plaintiff below might have applied to the court to set aside their proceedings, but he was not bound to do so. He had a right to lie by until the judgment was set up against him, and then to show that the proceedings were void for want of jurisdiction. In *Davis* v. *Packard* (6 Wend. 327, 332), in the Court of Errors, the Chancellor, speaking of domestic judgments, says: "If the jurisdiction of the Court is general or unlimited both as to parties and subject-matter, it will be presumed to have had jurisdiction of the cause unless it appears affirmatively from the record, *or by showing of the party denying the jurisdiction of the court,* that some special circumstances existed to oust the court of its jurisdiction in that particular case." In *Bloom* v. *Burdick* (1 Hill, 130), Bronson, J., says: "The distinction between superior and inferior courts is not of much importance in this particular case, for whenever it appears that there was a want of jurisdiction, the judgment will be void in whatever court it was rendered," and in *People* v. *Cassels* (5 Hill 164, 168), the same learned judge makes the remark, that no court or officer can acquire jurisdiction by the mere assertion of it, or by falsely alleging the existence of facts upon which jurisdiction depends. In *Harrington* v. *The People* (6 Barb., 607, 610), Paige, J., expresses the opinion that the jurisdiction of a court, whether of general or limited jurisdiction, may be inquired into, although the record of the judgment states facts giving its jurisdiction. He repeats the same view in *Noyes* v. *Butler* (6 Barb., 613, 617), and in *Hurd* v. *Shipman* (6 Barb., 621, 623, 624), where he says of superior as well as inferior courts, that the record is never conclusive as to the recital of a jurisdictional fact, and the defendant is always at liberty to show a want of jurisdiction, although the record avers the contrary. If the court had no jurisdiction, it

had no power to make a record, and the supposed record is not in truth a record. (Citing *Starbuck* v. *Murray*, 5 Wend., 158.) The language of Gridley, J., in *Wright* v. *Douglass* (10 Barb., 97, 111). is still more in point. He observes: "It is denied by counsel for the plaintiff, that want of jurisdiction can be shown collaterally to defeat a judgment of a court of general jurisdiction. The true rule, however, is that laid down in the opinion just cited (op. of Bronson, J., in *Bloom* v. *Burdick*, 1 Hill, 138 to 143), that in a court of general jurisdiction it is to be presumed that the court has jurisdiction till the contrary appears, but the want of jurisdiction may always be shown *by evidence*, except in one solitary case, viz: "When jurisdiction depends on a fact that is litigated in a suit, and is adjudged in favor of the party who avers jurisdiction, then the question of jurisdiction is judicially decided, and the judgment record is conclusive evidence of jurisdiction until set aside or reversed by a direct proceeding." * * *

In the *Chenung Canal Bank* v. *Judson* (8 N. Y., 254), the general principle is recognized, that the jurisdiction of any court exercising authority over a subject may be inquired into, and in *Adams* v. *The Saratoga and Washington R. R. Co.* (10 N. Y., 328, 333), Gridley, J., maintains as to the judgments of all courts, that jurisdiction may be inquired into, and disproved by evidence, notwithstanding recitals in the record and says that such is the doctrine of the courts of this State, although it may be different in some of the other States, and perhaps also in England, and he says "the idea is not to be tolerated that, the attorney could make up a record or decree, reciting that due notice was given to the defendant of a proceeding, when he never heard of it, and the decree held conclusive against an offer to show this vital allegation false. * * *

And in *Bolton* v. *Jacks* (6 Rob. 198), Jones, J., says that it is now conceded, at least in this State, that want of jurisdiction will render void the judgment of any court, whether it be of superior or inferior, of general, limited or local jurisdiction, or of record or not, and the bare recital of jurisdictional facts in the record of a judgment of any court, whether superior or inferior, of general or limited jurisdiction, is not conclusive, but only *prima facie* evidence of the truth of the fact recited, and a party against whom a judgment is offered, is not by the bare fact of such recitals estopped from showing, by affirmative proof, that they were untrue and thus rendering the judgment void for want of jurisdiction. He cites in support of this opinion, several of the cases which I have referred to and *Dobson* v. *Pearce* (12 N. Y., 167), and *Hatcher* v. *Rocheleau* (18 N. Y., 92).

It thus appears that the current of judicial opinion in this State is very strong and uniform in favor of the proposition stated by Jones, J., in 6 Rob. 198, and if adopted here, is decisive of the present case. It has not as yet, however, been directly adjudicated, and if sustained, it must rest upon the local law of this State, as it finds no support in adjudications elsewhere. There are reasons, however, founded upon our system of practice, which would warrant us in so holding. The powers of a court of equity being vested in our courts of law, and equitable defenses being allowable, there is no reason why, to an action upon a judgment, the defendant should not be permitted to set up, by way of defense, any matter which would be ground of relief in equity against the judgment; and it is conceded in those States where the record is held conclusive, that when the judgment has been obtained by fraud, or without bringing the defendant into court, and the want of jurisdiction does

not appear upon the face of the record, relief may be obtained in equity.

Hinchman v. *Richie* (1849) "The finding of an inquisition of lunacy may be impeached on the ground of fraud, and in such case it will furnish no justification for the arrest and confinement of the party."

Susan Conkey by Whipple Cook, her Guardian VERSUS *Henry Kingman* (1827) "Morton, J., pronounced the judgment of the court: The letter of guardianship and the bond for the faithful performance of the trust, approved by the judge of probate, were undoubtedly *prima facie* evidence of the appointment of the guardian. But they were not conclusive. The defendant might show, that though in form they were correct, yet in substance they were defective and void. * * *

It further appears, that no notice was given to the plaintiff, of the inquisition of the selectmen or of the proceedings before the judge of probate, and that there was no adjudication that she was *non compos mentis* or that a guardian be appointed. She was thus deprived of the management of her property, and, to some extent, of her liberty, without an opportunity to object or be heard, and without any formal judgment. Those are undoubtedly fatal defects, and render the whole proceeding unauthorized and void. It was so adjudged in *Chase* v. *Hathaway et al.*, 14 Mass. R. 222; *Wait* v. *Maxwell*, 5 Pick. 217; and *Hathaway* v. *Clark*, in id. 490. And in the last case, it was holden, that the healing influence of time, after a lapse of thirty years, could not cure the infirmity.

The appointment of the guardian being a nullity, it cannot authorize him to do any act which would bind his ward. Even an executive officer, to whom the guar-

dian was likened in the argument, cannot justify under a void precept. And although the letter of guardianship produced by the plaintiff was sufficient *prima facie*, yet we can discover no principle by which the defendant should be precluded from showing its invalidity. * * * "

Judgment of Court of Common Pleas affirmed.

United States, Appt., v. *Samuel R. Throckmorton et al.*, 98 U. S., 61 (October Term, 1878). (See S. C., 8 Otto., 61-71, Trial Brief, pp. 190-191.)

Mr. Justice Miller said:

"There is no question of the general doctrine that fraud vitiates the most solemn contracts, documents, and even judgments. * * *

"In cases where, by reason of some thing done by the successful party to a suit, there was, in fact, no adversary trial or decision of the issue in the case. Where the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent, as by keeping him away from Court, a false promise of a compromise; or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff; * * * these, and similar cases which show that there has never been a real contest in the trial or hearing of the case, are reasons for which a new suit may be sustained to set aside and annul the former judgment or decree and open the case for a new and a fair hearing.

"In all these cases and many others which have been examined, relief has been granted, on the ground that, by some fraud practiced directly

upon the party seeking relief against the judgment or decree, that party has been prevented from presenting all of his case to the Court.

"On the other hand, the doctrine is equally well settled that the Court will not set aside a judgment because it was founded on a fraudulent instrument, or perjured evidence, or for any matter which was actually presented and considered in the judgment assailed.

"Mr. Wells, in his very useful work on *res adjudicata*, says, Section 499: 'Fraud vitiates everything, and a judgment equally with a contract; that is, a judgment obtained directly by fraud.' * * *

"The principle and the distinction here taken was laid down as long ago as the year 1702, by the Lord Keeper in the High Court of Chancery, in the case of *Tovey* v. *Young*, Prec. in Ch., 193.

"This was a bill in chancery brought by an unsuccessful party to a suit at law, for a new trial, which was at that time a very common mode of obtaining a new trial. One of the grounds of the bill was, that complainant had discovered since the trial was had that the principal witness against him was a partner in interest with the other side. The Lord Keeper said: 'New matter may in some cases be ground for relief; but it must not be what was tried before; nor, when it consists in swearing only, will I ever grant a new trial, unless it appears by deed, or writing, or that a witness, on whose testimony the verdict was given, were convict of perjury or the jury attainted.'"

Dick E. Arrowsmith, Appt. v. *Edward H. Gleason*

et al. October Term, 1888. 129 U. S. 86 (see S. C. Reporter's ed. 86-101.)

Mr. Justice Harlan said: "But whether that be so or not, it is difficult to perceive why the circuit court is not bound to give relief according to the recognized rules of equity, as administered in the Courts of the United States, the plaintiff being a citizen of Nevada, the defendants citizens of Ohio, and the value of the matter in dispute, exclusive of interest and costs, being in excess of the amount required for the original jurisdiction of such courts. * * * But this court, observing that the constitutional right of the citizen of one State to sue a citizen of another State in the courts of the United States, instead of resorting to a State tribunal, would be worth nothing, if the court in which the suit is instituted could not proceed to judgment and afford a suitable measure of redress, * * * We have repeatedly held that the jurisdiction of the Courts of the United States, over controversies between citizens of different States, can not be impaired by the laws of the States which prescribe the modes of redress in their courts, or which regulate the distribution of their judicial power. If legal remedies are sometimes modified to suit the changes in the laws of the States and the practice of their courts, it is not so with equitable. The equity jurisdiction conferred on the federal courts is the same as that the High Court of Chancery in England possesses, is subject to neither limitation nor restraint by State legislation, and is uniform throughout the different States of the Union. * * *

As said in *Barrow* v. *Hunton*, 99 U. S. 80, 85 (25: 407, 408), the character of the case is always open to examination, 'for the purpose of determining whether, *ratione materiae* the courts of the United States are in-

competent to take jurisdiction thereof. State rules on the subject can not deprive them of it.' * * *

The most solemn transactions and judgments may at the instance of the parties, be set aside or rendered inoperative for fraud. * * * It is generally parties that are the victims of fraud. The court of chancery is always open to hear complaints against it, whether committed *in pais* or in or by means of judicial proceedings. In such cases the court does not act as a court of review, nor does it inquire into any irregularities or errors or proceeding in another court; but it will scrutinize the conduct of the parties and if it finds that they have been guilty of fraud in obtaining a judgment or decree, it will deprive them of the benefit of it and of any inequitable advantage which they have derived under it" * * * citing Story, Eq. Jur. § § 1570, 1573; Kerr, Fraud & M. 352, 353; *Gaines* v. *Fuentes*, 92 U. S. 10 (23: 524); and *Barrow* v. *Hunton*, 99 U. S. 80 (25: 407). So, in *Reigal* v. *Wood*, 1 Johns. Ch. 402 406.

"Relief is to be obtained not only against writings, deeds and the most solemn assurances, but against judgments and decrees, if obtained by fraud and imposition." To the same effect is *Bowen* v. *Evans*, 2 H. L. Cas. 257, 281: "If a case of fraud be established equity will set aside all transactions founded upon it, by whatever machinery they may have been effected, and notwithstanding any contrivances by which it may have been attempted to protect them. It is immaterial, therefore, whether such machinery and contrivances consisted of a decree of equity, and a purchase under it, or a judgment at law or of other transactions between the acts in the fraud." See also *Colclough* v. *Bolger*, 4 Dow, P. C. 54, 64; *Barnesly* v. *Powell*, 1 Ves. Sr. 120, 284, 289;

Richmond v. *Tayleur*, 1 P. Wms. 736; *Niles* v. *Anderson*, 5 How. (Miss.) 365, 386.

These principles control the present case which, although involving rights arising under judicial proceedings in another jurisdiction, is an original, independent suit for equitable relief between the parties; such relief being grounded on a new state of facts, disclosing not only imposition upon a court of justice in procuring from it authority to sell an infant's lands when there was no necessity therefor, but actual fraud in the exercise, from time to time, of the authority so obtained. As this case is within the equity jurisdiction of the circuit court, as defined by the Constitution and laws of the United States, that court may, by its decree, lay hold of the parties, and compel them to do what according to the principles of equity they ought to do, thereby securing and establishing the rights of which the plaintiff is alleged to have been deprived by fraud and collusion."

Sarah E. Marshall, Plff. in Err. v. *Henry B. Holmes, Sheriff, et al.*, 141 U. S. 589 (See S. C. Reporter's ed. 589-601.)

Mr. Justice Harlan said: "While, as a general rule, a defense can not be set up in equity which has been fully and fairly tried at law, and although in view of the large powers now exercised by courts of law over their judgments, a court of the United States, sitting in equity, will not assume to control such judgments for the purpose simply of giving a new trial, it is the settled doctrine that 'any fact which clearly proves it to be against conscience to execute a judgment, and of which the injured party could not have availed himself in a court of law, or of which he might have availed him-

self at law, but was prevented by fraud or accident, unmixed with any fault or negligence in himself or his agents, will justify an application to a court of chancery.' *Marine Ins. Co. of Alexandria* v. *Hodgson,* 11 U. S. 7 Cranch, 332, 336 (3: 362, 363); *Hendrickson* v. *Hinckley,* 58 U. S. 17 How. 443, 445 (15: 123, 124); *Crim* v. *Handley,* 94 U. S. 652, 653 (24: 216); *Metcalf* v. *Williams,* 104 U. S. 93, 96 (26: 665, 666); *Embrey* v. *Palmer,* 107 U. S. 3, 11 (27: 346, 349); *Knox County* v. *Harshman,* 133 U. S. 152, 154 (33: 586, 587); 2 Story, Eq. Jur. § § 887, 1574; *Floyd* v. *Jayne,* 6 Johns Ch. 479, 482, 2 L. ed. 190, 192. See also *United States* v. *Throckmorton,* 98 U. S. 61, 65 (25: 93, 95.)" * * *

Is it true that a circuit court of the United States, in the exercise of its equity powers, and where diverse citizenship gives jurisdiction over the parties, may not, in any case, deprive a party of the benefit of a judgment fraudulently obtained by him in a State court, the circumstances being such as would authorize relief by the federal court, if the judgment had been rendered by it and not by a State court?

A leading case upon this subject is *Barrow* v. *Hunton,* 99 U. S. 80, 82 (25: 407, 408). That was a suit in one of the courts of Louisiana to annul a judgment rendered in a court of that State upon the ground that it was founded upon a default taken, without lawful service of the petition and a citation, and because, prior to the judgment, the party seeking to have it set aside had been adjudged a bankrupt. The case was removed to the Circuit Court of the United States, and was subsequently remanded to the State court. The court held that the jurisdiction of the circuit court depended upon the question whether the action to annul the judgment was or was not in its nature a separate suit, or only a supplementary proceeding so connected with the origi-

nal suit as to form an incident to it, and to be substantially a continuation of it. It said: "If the proceeding is merely tantamount to the common law practice of moving to set aside a judgment for irregularity, or to a writ of error, or to a bill of review or an appeal, it would belong to the latter category, and the United States Courts could not properly entertain jurisdiction of the case. Otherwise, the circuit courts of the United States would become invested with power to control the proceedings in the State courts, or would have appellate jurisdiction over them in all cases where the parties are citizens of different States. Such a result would be totally inadmissible. On the other hand, if the proceedings are tantamount to a bill in equity to set aside a decree for fraud in the obtaining thereof, then they constitute an original and independent proceeding, and according to the doctrine laid down in *Gaines* v. *Fuentes*, 92 U. S. 10 (23: 524), the case might be within the cognizance of the federal courts. The distinction between the two classes of cases may be somewhat nice, but it may be affirmed to exist. In the one class, there would be a mere revision of errors and irregularities, or of the legality and correctness of the judgments and decrees of the State courts; and in the other class, the investigation of a new case, arising upon new facts, although having relation to the validity of an actual judgment or decree, or of the party's right to claim any benefit by reason thereof."

Referring to the provisions of the Louisiana Code of Practice authorizing an action to annul a judgment obtained through fraud, bribery, forgery of documents, etc., the court said that it was disposed to allow the fact that, by the local law, an action of nullity could only be brought in the court rendering the judgment, or in the court to which the judgment was taken by appeal,

to operate so far as to make it an invariable criterion of the want of jurisdiction in the courts of the United States. "If," the court said, "the legislatures could, by investing certain courts with exclusive jurisdiction over certain subjects, deprive the federal courts of all jurisdiction, they might seriously interfere with the right of the citizen to resort to those courts. The character of the cases themselves is always open to examination for the purpose of determining whether, *ratione materiae,* the courts of the United States are competent to take jurisdiction thereof. State rules on the subject can not deprive them of it." As that proceeding was equivalent in common law practice to a motion to set aside the judgment for irregularity, or to a writ of error *coram vobis,* and as the cause of nullity related to form only, the case was held not to be cognizable in the courts of the United States.

The rules laid down in *Barrow* v. *Hunton* were applied in *Johnson* v. *Waters,* 111 U. S. 640, 667 (28: 547, 556); and *Arrowsmith* v. *Gleason,* 129 U. S. 86, 101 (32: 630, 635). In *Johnson* v. *Waters,* this court upheld the jurisdiction of the Circuit Court of the United States, by a decree in an original suit, to deprive parties of the benefit of certain fraudulent sales made under the orders of a probate court of Louisiana, which court, by the law of that State, had exclusive jurisdiction of the subject-matter of the proceedings out of which the sales arose. After observing that the court of chancery is always open to hear complaints against fraud, whether committed *in pais* or in or by means of judicial proceedings, the court said: "In such cases, the court does not act as a court of review, nor does it inquire into any irregularities or errors of proceeding in another court; but it will scrutinize the conduct of the parties, and, if it finds they have been guilty of fraud, in obtaining a judgment

or decree, it will deprive them of the benefit of it, and of any inequitable advantage which they have derived under it." In *Arrowsmith* v. *Gleason* the grounds of the jurisdiction of the Circuit Court of the United States to entertain an original suit—the parties being citizens of different States—to set aside a sale of lands fraudulently made by the guardian of an infant, under authority derived from a probate court, are thus stated; "These principles control the present case, which, although involving rights arising under judicial proceedings in another jurisdiction, is an original, independent suit for equitable relief between the parties; such relief being grounded upon a new state of facts, disclosing not only imposition upon a court of justice in procuring from it authority to sell an infant's lands when there was no necessity therefor, but actual fraud in the exercise, from time to time, of the authority so obtained. As the case is within the equity jurisdiction of the circuit court, as defined by the Constitution and laws of the United States, that court may, by its decree, lay hold of the parties and compel them to do what, according to the principles of equity, they ought to do, thereby securing and establishing the rights of which the plaintiff is alleged to have been deprived by fraud and collusion."

POINT 9. The said Commitment Proceedings were void *in toto* for they were without due process of law and therefore unconstitutional for the following reason.

There was lack of notice.

The said Commitment Papers (Transcript of Record, p. 113, Fols. 222-223) show that plaintiff, John Armstrong Chaloner, a citizen of Virginia, was committed to Bloomingdale Insane Asylum at White Plains, New York, by an order entered March 10th,

Hutchins v. *Johnson,* 12 Conn. 376 (1837) was an action brought by the conservator (the term then used to designate the committee) of a lunatic. One of the facts to be proved by plaintiff was his appointment as conservator. On appeal from a judgment in his favor, it was *held* (per Williams, Ch. J.), that because the record of his appointment failed to show that notice of the application was ever given to the alleged lunatic, the judgment should be reversed, notice being essential to the validity of so important a proceeding both by "the fundamental principles of justice" (citing *Chase* v. *Hathaway,* 14 Mass. 224) and by the statute of Connecticut. "A requirement so salutary should be enforced; and, until such notice is given, the court has no more right to make the appointment, no more jurisdiction in the case, than any other tribunal. * * *

"The case presented to us is that of a court, to whom an authority is delegated upon certain terms and conditions, having proceeded to act under that authority without having seen that those prerequisite conditions were complied with: in which cases we have held such proceeding void."

(Action was in simple *Assumpsit.*)

In *Board of Supervisors* v. *Budlong,* 51 Barb. 493 (1868) defendant was sued for the expense of maintaining his wife at the county insane asylum. The question was presented (both by objection and exception to the introduction in evidence of a certificate of the County Judge, and by offer to prove and exception to the exclusion of evidence, that the facts stated in said certificate as to the insanity of the wife were untrue), whether the defendant, who was not a party to the proceeding to adjudge his wife a lunatic, was concluded thereby and by the certificate of the result thereof.

Held, per E. D. Smith, J., the husband was not so bound; and the admission in evidence of the certificate, and the exclusion of evidence of the sanity of the wife, were error, requiring reversal. "The Statute, which authorized the certificate, does not declare what shall be the force or effect of such certificate as evidence, or whom it shall bind; and it must, therefore, stand upon the same basis with all other judgments or adjudications. It must bind those who were parties and privies to the proceeding, and had an opportunity to litigate the questions involved in such investigation and adjudication. No one else can be bound by this certificate. It is a fundamental rule of law and of common justice that no one shall be concluded by a legal judgment, decision or adjudication had or made in any suit or proceeding to or in which he was not a party or privy, and of which he had no notice, or in respect to which he had no opportunity to defend himself, or to litigate the question involved, or upon which his liability depended. The jurisdiction of all courts and officers exercising judicial functions is open to investigation, question and inquiry, whenever their proceedings are set up or sought to be enforced; and when there is no jurisdiction, such proceedings are absolutely void. If this certificate, then, was *prima facie* evidence of the facts it recites and affirms, or finds, it could not be conclusive on the defendant and he was clearly entitled to disprove the facts alleged or stated therein, upon which the jurisdiction of the judge depended."

Eslava v. *Lepetre,* 21 Ala. 504 (1852) was a suit to foreclose mortgages, one of which was executed by the mortgagor and his wife's guardian in lunacy. She was not made a party, though her guardians were. It appeared that they had been appointed on petition of

the husband, alleging his wife's insanity, etc., but there was no issuance of a writ *de lunatico inquirendo* and no finding of a jury therein. *Held,* per Ligon, J., appointment void, and objection that wife was not a party to the foreclosure suit well taken. "Without the issuance of this writ, and the finding of a jury, the County Court Judge had no power to declare her a lunatic or to appoint a guardian for her. These proceedings are indispensable to give the County Court jurisdiction to make the appointment; and as they were not had and as that Court is one of limited jurisdiction, the proceedings upon the appointment of guardians are *coram non judice and void.* Such being the case they may be impeached in any Court in a collateral proceeding in which a party seeks a benefit under them. * * * Neither does the record show that she had any notice whatever of the proceedings. They were *ex parte,* and are consequently null and void."

Molton v. *Henderson,* 62 Ala. 426 (1878) was an action brought by the guardian of a lunatic, the son of one Thos. Molton, to declare lands in defendant's possession subject to the trusts created by the will of the lunatic's father. The guardian had been appointed without notice to the lunatic and had brought proceedings to have the land in question sold, as beneficial to the lunatic. The sale took place, and defendant later purchased from grantees of the purchaser. Plaintiff now claims the sale to be void, alleging the jurisdictional defect in the appointment of the guardian, invalidating the proceedings for the sale.

Held, the want of notice rendered the inquisition of lunacy void. But the defendant having had possession adversely for the statutory time, *held,* entitled to retain it.

Mulligan v. *Smith,* 59 Cal. 206. Holds in reference to notice in street opening proceedings. In absence of notice, not precluded from attaching sufficiency of petition.

Hey Sing Ieck v. *Anderson,* 57 Cal. 251. *Held, in re* seizure of fishing nets: Confiscations without a judicial hearing and judgment, after due notice, are void, as not due process of law.

McGee v. *Hayes,* 127 Cal. 336. I under Code Civ. Proc. 1763, providing that, on the filing of a petition for the appointment of a guardian for an incompetent person, notice must be given to such person of time and place of hearing of at least 5 days and "such person if able to attend must be produced," the personal appearance of such person on the hearing and his request that the petition be granted, do not cure fatal defects in the notice of the hearing served on him.

Board of Education v. *Bakerwell,* 122 Ill., 348, *Re* taking of property for normal school. "As said in *Westervelt* v. *Gregg,* 2 Kern 209: 'Due process of law undoubtedly means in the due course of legal proceedings according to those rules and forms which have been established for the protection of private rights. Such an act as the legislature may, in an uncontrolled exercise of its power, think fit to pass is in no sense the process of law designated by the Constitution.'"

Susan Conkey, by Whipple Cook, her Guardian VERSUS *Henry Kingman,* 24 Pick. 115.

Assumpsit on a promissory note as follows:

"Pelham, October 27th, 1827. For value received

of Whipple Cook, guardian of Susan Conkey, a distracted person, of Pelham, I promise to pay him the sum of $7.67 annually, that is to say, at the expiration of each year from the above date, for and during the natural life of said Susan Conkey. Witness my hand. Henry Kingman."

The plaintiff sued by Cook as her guardian, and the defendant pleaded in abatement, that at the time of suing out the writ the plaintiff was not under the guardianship of Cook; and issue was joined upon this plea.

At the trial in the Common Pleas, before Williams, J., the plaintiff produced the following evidence (to the competency of all of which the defendant objected) viz: a letter of guardianship, dated September 4th, 1827, from the judge of probate, appointing Cook the guardian of the plaintiff as a person *non compos mentis*, and a bond duly executed and approved for the faithful performance by Cook of his duties as guardian. The plaintiff further proved, that afterwards Cook, claiming a right to act in behalf of the plaintiff by virtue of the letter of guardianship, demanded of one Fitts, in behalf of the plaintiff, that he should set off her dower in a parcel of land of which she was dowable, and which her husband had conveyed to the defendant, and the defendant had conveyed with warranty to Fitts; that upon this a negotiation was had, which resulted in an agreement by the defendant to pay Cook so much money annually as was equivalent to the value of the dower, to be determined by arbitrators; and that in consideration thereof Cook agreed not to procure the dower to be set off, that arbitrators, mutually chosen, then awarded that the defendant should pay the sum of $7.67 annually; that Cook, as guardian, executed a writing purporting to be a lease of the dower during the life of the plaintiff, and the defendant thereupon gave the note above recited.

and that on the third of November, 1828, the defendant paid one instalment of the note.

To meet this evidence, the defendant proved (the plaintiff objecting to the introduction of the evidence), that the application by the selectmen of Pelham for a commission contained the name of Sarah Conkey, and not Susan Conkey; that the order of inquisition contained the same name; and that the name of Susan Conkey first occurs in the return of the commission. The defendant also proved that previous to the appointment of Cook as guardian no notice was issued by the judge of probate to the plaintiff to appear and show cause why a guardian should not be appointed, nor any adjudication made that she was *non compos mentis*, or that a guardian be appointed.

The judge ruled that Cook was not guardian of the plaintiff for the purpose of prosecuting this action, and by consent of parties ordered a nonsuit. To this ruling and also to the admission of the evidence offered by defendant the plaintiff excepted. * * *

Morton, J., pronounced the judgment of the court:

The letter of guardianship and the bond for the faithful performance of the trust, approved by the judge of probate, were undoubtedly *prima facie* evidence of the appointment of the guardian. But they were not conclusive. The defendant might show, that though in form they were correct, yet in substance they were defective and void. * * *

It further appears that no notice was given to the plaintiff of the inquisition of the selectmen or of the proceedings before the judge of probate, and that there was no adjudication that she was *non compos mentis* or that a guardian be appointed. She was thus deprived of the management of her property and, to some

extent, of her liberty, without an opportunity to object or be heard, and without any formal judgment. These are undoubtedly fatal defects, and render the whole proceeding unauthorized and void. It was so adjudged in *Chase* v. *Hathaway, et al.*, 14 Mass., R. 222; *Wait* v. *Maxwell*, 5 Pick. 217; and *Hathaway* v. *Clark*, in id. 490. And in the last case it was holden, that the healing influence of time, after a lapse of thirty years, could not cure the infirmity.

The appointment of the guardian being a nullity, it cannot authorize him to do any act which would bind his ward. Even an executive officer, to whom the guardian was likened in the argument, cannot justify under a void precept. And although the letter of guardianship produced by the plaintiff was sufficient *prima facie*, yet we can discover no principle by which the defendant should be precluded from showing its invalidity. * * *

Judgment of Court of Common Pleas affirmed.

Doyle Petitioner.

(16 Rhode Island, 537.)

June, 1899.

Per Curiam: * * *

It is not enough to answer that the persons are insane, since whether they are insane is the very question which ought to be determined before they are so completely confined as not any longer to have power to institute proceedings for their own relief, or to be heard and adduce evidence in their own behalf.

Great West Mining Company v. *Woodmas of Alston Mining Company*, 13 Am. St. Rep. 204 (December, 1888), (12 Colorado 46.)

Gerry, J., said: *Void judgment, Effect of.*—Absence of legal service or authorized appearance is jurisdictional and without jurisdiction no judgment can be entered under which any rights can be lost or acquired.

Jurisdiction cannot be acquired by the mere levy of an attachment, sufficient to authorize the court to determine the question of indebtedness, and to condemn the attached property to pay the same. Though an attachment is levied, jurisdiction is not required until service of summons.

Due Process of Law * * * No person can be prejudiced, or his rights of person or property affected, without notice, actual or constructive. Any proceeding which violates this principle is not due process of law, and is not according to the law of the land. * * *

Judicial Sale. * * * *Relief will be granted from a sale based upon a judgment* entered without service of process upon or appearance on behalf of the defendant, without inquiring as to the merits of the original claim. Although a just cause of action exists against the defendant, he must be allowed an opportunity to pay the debt, or redeem the property from sale, before his title thereto can be divested by judicial proceedings.

McCurry v. *Hooper*, 12 Alabama, 823, January Term, 1848.

This was an action of detinue, brought by the plaintiff, to recover of defendant, certain slaves. On the trial, the plaintiff read in evidence a bill of sale, executed to him for the slaves, by George L. Patrick, bearing the date of January, 1845. At the date of the instrument, the slaves were in possession of Patrick, and belonged to him. The consideration, expressed in the bill of sale, is $1,200.

The defense was, that at the day of the execution of the instrument Patrick was *non compos mentis;* and to show this, the defendant offered in evidence the transcript of a record from the orphans' court of St. Clair, from which it appears that on the first day of January,

application was made to the judge of the orphans' court by the friends of George L. Patrick for an inquisition of lunacy to ascertain if said Patrick was not a lunatic, and incapable of managing his affairs; but it does not appear who those friends were. The judge of the orphans' court ordered a writ *de lunatico inquirendo* to be issued to the sheriff of the county, commanding him to summon twelve citizens of the county, to make inquisition, if said Patrick be a lunatic, and incapable of managing his affairs. The sheriff summoned the jury, and on the 4th day of January, 1845, after being sworn, they found that Patrick was incapable of transacting his business, and was liable to be imposed on by any designing person, and certified this verdict, under their hands and seals. The sheriff returned the writ, with this verdict of the jury, to the orphans' court.

Dargan, J.: * * * The first question we propose to examine, is, was the record of the orphans' court of St. Clair purporting to be an inquisition of lunacy, to ascertain if George L. Patrick was sane, or *non compos mentis*, evidence for any purpose?

These proceedings purport to be had on the application of the friends of Patrick. The writ was issued, and the jury certified that he was unable to transact business; that he was liable to be imposed upon by designing persons; and that he was *non compos mentis*. This verdict was returned with the writ, and thereupon, a guardian was appointed, the defendant in error, to take charge of his property and person. It does not appear that George L. Patrick had any notice whatever of the time, and place, of making this inquisition; or that the jury saw him, or made any application, or effort to see him. It does not appear that he had any notice of the application to the court for the writ, or that he had any notice of the action of the court, on the return

of the writ; but the proceedings were *ex parte* merely; and by the judgment of the orphans' court, the defendant in error is invested with the control of the property and person of Patrick.

I think it is a fundamental principle of justice, essential to the rights of every man, that he shall have notice of any judicial proceedings that is about to be had for the purpose of divesting him of his property, or the control of it, that he may appear and show to them, who sit in judgment on his rights, that he has not lost them by the commission of a crime; nor should those rights be taken from him by reason of any misfortune. That he has the right to appear before the jury, and the court, and to show that he is not insane, that he and his property should not be put in charge of another is a self-evident truth, and is denied by no legal authority. (See 12 Ves. 444; *Ex parte* Cranmer, Stock on Lunacy, 100.) This being his right, to appear, and defend himself, the question is, what effect is the law to give to a proceeding that had denied this right?

In the case of *Wait* v. *Maxwell*, 5 Pickering, 219, this precise question came up, and the court held, that the proceeding of the court of probate, and the grant of letters of guardianship were null and void, because the *non compos* had no notice of them. And in 14 Mass. R. 222, it was determined, that it was the right of an individual against whom proceedings in the court of probate were taken to appear and controvert the fact of insanity, and that an inquisition taken without notice was void.

These authorities seem to be in unison with the first principles of justice, and are not opposed by any authorities that have fallen under our observation. We therefore come to the conclusion that the proceedings of the county court, in the nature of an inquisition, and deter-

mining said Patrick to be *non compos mentis*, are void; that they are not evidence for any purpose in the trial of the issues in the case, and should have been rejected, and not allowed to go to the jury. * * *

Let the judgment be reversed and the cause remanded.

DUE PROCESS OF LAW.

George Burdick v. *The People of the State of Illinois*, 149 Ill. 600.

(Filed at Mt. Vernon April 2, 1894.)

Magruder, J., said: * * * The phrase "due process of law" is the equivalent of the words "law of the land" as used in Magna Charta, and means "in the due course of legal proceedings according to those rules and forms which have been established for the protection of private rights." (*Board of Education* v. *Bakewell*, 122 Ill. 339; *Rhinehart* v. *Schuyler*, 2 Gilm. 473; *Davidson* v. *New Orleans*, 96 U. S., 97; Cooley on Cons. Lim. 5 ed. marg. page 356, top page 435.) An act of the legislature is not necessarily the "law of the land." A State cannot make anything "due process of law," which by its own legislation, it declares to be such.

Murray's Lessee v. *Hoboken Land and Improvement Co.*, 18 How. (U. S., 1855) 272.

The Court, per Curtis, J., "The article (in United States Constitution *re* "due process of law") is a restraint on the legislative as well as on the executive and judicial powers of the government, and cannot be so construed as to leave congress free to make any process "due process of law," by its mere will.

Bardwell v. *Collins*, 20 Am. St. Rep. 554, Minn. (July, 1890).

Mr. Justice Field, in delivering the opinion of the court in the recent case of *Dent* v. *West Virginia*, 129 U. S. 114, 123, discussing this question, said: "As we have said on more than one occasion, it may be difficult, if not impossible, to give to the terms 'due process of law,' a definition which will embrace every permissible exertion of power affecting private rights, and exclude such as are forbidden. They come to us from the law of England, from which country our jurisprudence is to a great extent derived, and their requirement was there designed to secure the subject against the arbitrary action of the crown, and place him under the protection of the law. They are deemed to be equivalent to 'the law of the land.' In this country, the requirement is intended to have a similar effect against legislative power; that is, to secure the citizen against any arbitrary deprivation of his rights, whether relating to his life, his liberty, or his property.

"Due process of law" not confined to judicial proceedings. * * * Due process of law does not always mean judicial process. It is not confined to judicial proceedings, but extends to every case which may deprive the citizen of life, liberty or property, whether the proceeding be judicial, administrative or executive in its nature: *Eames* v. *Savage*, 77 Me. 212; 52 Am. Rep. 751; *Weimer* v. *Bunbury*, 30 Mich., 201; *Stuart* v. *Palmer*, 74 N. Y., 183.

Mr. Justice Miller, in delivering the opinion of the court in *Davidson* v. *New Orleans*, 96 U. S. 104, said: "Whenever, by the laws of a State or by State authority, a tax, assessment, servitude, or other burden is imposed upon property for the public use, whether it be for the whole State, or of some more limited portion of the community, and those laws provide for a mode confirming or contesting the charge thus imposed, in the

ordinary courts of justice, with such notice to the person or such proceeding in regard to the property as is appropriate to the nature of the case, the judgment in such proceedings cannot be said to deprive the owner of his property without due process of law, however obnoxious it may be to other objections. * * * It is not possible to hold that a party has, without due process of law, been deprived of his property, when, as regards the issues affecting it, he has, by the laws of the State, a fair trial in a court of justice, according to the modes of proceeding applicable to such a case." * * *

But the enforcement by a State of a tax levied under a void law is the deprivation of the owner of his property without due process of law; *Dundee Mortgage, etc., Co.* v. *School District No.* 1, 19 Fed. Rep., 259. And a law that imposes an assessment for local improvements, without notice to, and a hearing on, or an opportunity to be heard, on the part of the owner of the property to be assessed, deprives him of his property without due process of law; *Stuart* v. *Palmer*, 74 N. Y., 183. A proceeding for the assessment of property for taxes —that is, the ascertainment of its value upon evidence taken—is judicial in its nature. And to make a law authorizing such a proceeding valid, it must provide some kind of notice and an opportunity to be heard respecting it, before the proceeding becomes final, otherwise it will lack the essential ingredient of due process of law; *County of Santa Clara* v. *Southern Pacific R. R. Co.*, 18 Fed. Rep., 385. * * *

A statute which provides that the rates of charges for passengers and freights recommended and published by a State railroad commission shall be final and conclusive evidence as to what are equal and reasonable, and that there can be no judicial inquiry as to the reasonableness of such rates, deprives a railway company

of its property without due process of law: *Chicago, etc., Ry. Co.* v. *Minnesota,* 134 U. S. 418. Mr. Justice Blatchford, in delivering the opinion of the majority of the court in this case, referring to the statute, said: "It deprives the company of its right to a judicial investigation by due process of law, under the forms and with the machinery provided by the wisdom of successive ages for the investigation, judicially, of the truth of a matter in controversy." * * *

A law which authorizes the summary seizure and sale of property in use by a person from whom a license is due, without any notice to the owner, without any trial, and without any opportunity to be heard, is void, because it attempts to authorize the taking of property without due process of law: *Chauvin* v. *Valiton,* 8 Mont. 451.

An act which undertakes to charge the owner of a dog with the amount of damage done by his dog, as fixed by the selectmen of the town, without an opportunity to the owner to be heard, is unconstitutional, because it attempts to take his property without due process of law: *East Kingston* v. *Towle,* 48 N. H. 57; 2 Am. Rep. 174. * * *

A statute providing that no convict shall be discharged from a State prison until he has remained the full term for which he was sentenced, excluding the time he may have been in solitary confinement for any violation of the rules and regulations of the prison, deprives him of his liberty without due process of law, and is therefore void: *Gross* v. *Rice,* 71 Me. 241. * * *

A person imprisoned for refusing to appear or testify before a county attorney under the Kansas act prohibiting the manufacture and sale of intoxicating liquors is distrained of his liberty without due process of law: *In re* Ziebold, 23 Fed. Rep. 791. * * *

A perusal of the foregoing cases will assist in deter-

mining the question, "What is due process of law?"

Bardwell v. *Collins* (*supra*).

In re Kemmler, 136 U. S. 436, Mr. Chief Justice Fuller, who delivered the opinion of the court in that case, discussing the question whether the act was in conflict with the Fourteenth Amendment to the Constitution of the United States, said: "As due process of law in the Fifth Amendment referred to that law of the land which derives its authority from the legislative powers conferred on Congress by the Constitution of the United States, exercised within the limits therein prescribed, and interpreted according to the principles of the common law, so in the Fourteenth Amendment, the same words refer to that law of the land in each State which derives its authority from the inherent and reserve powers of the State, exerted within the limits of those fundamental principles of liberty and justice which lie at the base of all our civil and political institutions."

Moody v. *Bibb, et al.*, 50 Alabama, 245.

Peters, C. J., said: "This great light in this important jurisdiction may sometimes enable us to do right, which is the law of laws, and what the sovereign authority always must intend. * * *

"I. The appointment of Moody as guardian of Rufus R. Sims, by the Orphans' Court of Tuscaloosa County, in June, 1849, whether for special or general purposes, was clearly void. The court acted without jurisdiction. Sims was not brought before the court in any manner and had no notice whatever of the proceedings to declare him a lunatic. This was necessary before he could be put under the restraint of a guardianship and deprived of the control of his own person and of his prop-

erty. This appointment was made before the adoption and promulgation of the Code of Alabama. The proceeding was, therefore, under the law as existed before the Code was proclaimed. A like case to this came under the judicial notice of this court in 1852, at the June term of that year. This was the case of *Eslava* v. *Lepetre*, 21 Ala., 505. In this latter case, the report shows that a guardian had been appointed for Mrs. Eslava as a person of unsound mind, on the petition of her husba by the Orphans' Court of Mobile County, without proceedings to have her declared a lunatic. The appointment of the guardian was made before the 7th day of January, 1849, as on that day her guardian was served with subpoena to bring her into court. 21 Ala., 511. In her case, the court said: 'This appointment was made upon no other assurance of the fact of Mrs. Eslava's lunacy than a petition of her husband without notice to her, and without the issue of a writ *de lunatico inquirendo*, and the verdict of a jury thereon. Without the issue of this writ, and the finding of the jury, the county court judge had no power to declare her a lunatic, or to appoint a guardian for her.' * * *

"But the right to life, liberty, and property is sacred, and it cannot be invaded by the legislative power. Decl. of Independence; Cooley's Const. Limit, p. 351 *et seq.*; Sedgwick on Stat. & Const. Law, p. 177 *et seq.*"

The State *ex rel. Larkin* v. *Ryan*, Court Commissioner, 70 Wisc., 676.

January 17—February 28, 1888.

Cassoday, J., said: "So sacred are certain rights of the citizen that they are especially guarded by our national constitution; which, among other things, declared that 'no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the

United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.' Sec. 1, Art. XIV., Amend. Const. U. S. In *Mugler* v. *Kansas*, 123 U. S., 663, it it is said by the court: 'Undoubtedly the State when providing by legislation for the protection of the public health, the public morals, or the public safety, is subject to the paramount authority of the Constitution of the United States, and may not violate rights secured or guaranteed by that instrument or interfere with the execution of the powers confided to the general government.'"

Joseph Chauvin, Respondent, v. *Henry G. Valiton, Appellant,* Constitutional Law, 5th Division, Revised Statutes.

The Court held: Nothing can be the law of the land in the sense of the Constitution, however general it may be, and however it may affect the rights of all persons alike, which deprives the citizen of his life, his liberty, or his property, without due process of law; and that, as we have already seen, contemplates that a hearing must be allowed to him at some stage of the proceedings against him, and a hearing would be but a hollow mockery if he could not be allowed to defend and be protected in his rights by the judgment of the court, or the administrative or executive officer with whom he has to do.

Sidney H. Stewart, Jr., Appellant, v. *George W. Palmer, as Collector, etc., et al., Respondents,* 74 New York, 183 (May, 1878).

Earl, J., held:

"I am of the opinion that the Constitution sanctions no law imposing such an assessment, without a notice to and a hearing or an opportunity of a hearing by the owners of the property to be assessed. It is not enough that the owners may by chance have notice or that they may, as a matter of favor, have a hearing. The law must require notice to them, and give them the right to a hearing and an opportunity to be heard. * * *

"The constitutional validity of law is to be tested, not by what has been done under it, but by what may, by its authority, be done. The Legislature may prescribe the kind of notice and the mode in which it shall be given, but it cannot dispense with all notice. * * *

"The Legislature can no more arbitrarily impose an assessment for which property may be taken and sold, than it can render a judgment against a person without a hearing. *It is a rule founded on the first principles of natural justice older than written constitutions, that a citizen shall not be deprived of his life, liberty or property without an opportunity to be heard in the defense of his rights,* and the constitutional provision that no person shall be deprived of these 'without due process of law' has its foundation in this rule. *This provision is the most important guaranty of personal rights to be found in the Federal or State Constitution. It is a limitation upon arbitrary power, and is a guaranty against arbitrary legislation.* No citizen shall arbitrarily be deprived of his life, liberty or property. This the Legislature cannot do nor authorize to be done. 'Due process of law' is not confined to judicial

proceedings, but extends to every case which may deprive a citizen of life, liberty, or property, whether the proceeding be judicial, administrative or executive (Weimer v. Bruenbury, 30 Mich., 201).

"This great guaranty is always and everywhere present to protect the citizen against arbitrary interference with these sacred rights. * * * It may, however, be argued generally that due process of law required an orderly proceeding adapted to the nature of the case in which the citizen has an opportunity to be heard, and to defend, enforce and protect his rights. A hearing or an opportunity to be heard is absolutely essential. We cannot conceive of due process of law without this."

In *Philadelphia* v. *Miller* (49 Penn. 440) Agner, J., speaking of taxation, says: "Notice or at least the means of knowledge is an essential element of every just proceeding which affects the rights of persons or property." * * *

It is a plain principle of justice applicable to all judicial proceedings, that no person should be condemned, or shall suffer judgment against him without an opportunity to be heard; and he says that an act "assessing persons without notice transcends the power of the Legislature, and is itself void."

Portland v. *Bangor* (65 Me. 120).

Walton, J., said: "If white men and women may be thus summarily disposed of at the North, of course, black ones may be disposed of in the same way at the South; and thus the very evil which it was particularly the ob-

ject of the Fourteenth Amendment to eradicate will still exist.

The objection to such a proceeding does not lie in the fact that the persons named may be restrained of their liberty, but in allowing it to be done without first having a judicial investigation to ascertain whether the charges made against them are true. Not in committing them to the workhouse, but in doing it without first giving them an opportunity to be heard. * * *

Philo Parsons and another v. *George B. Russell and another,* 11 Michigan, 113.

It was said: "Story defines 'due process,' etc., as 'being brought in to answer,' etc. This also means much the same as 'agreeable to the principles and usages of law' found in many statutes, *e. g.* U. S. Jud. Act § 14; and these principles and usages form the substratum of all State and Federal laws; Marshall Ch., J., Burr's Trial. * * *

Martin, Chief Justice, said:

Whatever may be the difficulty of defining this phrase of the Constitution when sought to be applied to other proceedings, when used in relation to those of a judicial character, it is evidently, and has been so universally held, intended to secure to the citizen the right to a trial according to the forms of law of the questions of his liability and responsibility, before his person or his property shall be condemned. Judicial action is in such case imperatively required, and "implies and includes *actor, reus, judex*—regular allegations, opportunity to answer, and trial according to some settled course of judicial proceedings." While we adopt the common law, or, to speak more accurately, so long as we recognize and submit to it, we recognize and adopt the fundamental principle that no man shall be party and judge in his own

case; that if tried, it shall be by his peers, and if deprived of liberty or property, it shall be by impartial judicial authority, after a trial and judgment under general laws. * * *

In the Common Pleas of Philadelphia.

Commonwealth *ex relatione Isaac Edmundson Stewart* v. *Thomas S. Kirkbride*, M. D. 2 Brewster, 419.

Brewster, J., said: I hold to the doctrine that no man can be deprived of his liberty without the judgment of his peers; and that it matters not to the law whether the alleged cause of detention is insanity or crime. * * *

The record shows no order made by the court for service of a notice of the proceedings, either upon the alleged lunatic or any other person; nor does it show that notice of any kind was given to any person. Lord Chancellor Erskine (*ex parte* Cranmer, 12 Ves. Jr., 455), said: "The party must certainly be present at the execution of the commission; it is his privilege." The same rule has been adopted in the United States. (See Russell's Case, 1 Barb. Ch. Rep., 38; and Hinchman's Case, Brightly's Rep., 181.) * * *

It is abhorrent alike to our sense of justice and to all judicial precedent that his character, liberty, and estate should be swept away from him without a hearing or opportunity of defense. To hold otherwise would be contrary to every principle of reason and justice.

They call for notice, and tested by their requirement this decree crumbles to ashes.

In *Dowell* against *Jacks*, 53 North Carolina Reports, page 387, the following is the *verbatim* finding of the court:

Manly, Judge: We regard as of no importance, connected with the merits of the petitioner's case, that attorneys were employed by a friend to attend, in her be-

half, to the inquisition of lunacy at July Term, 1859. She had no notice—was not legally represented, and what is of still greater importance, was not present, to be seen and examined by the jury.

Benjamin Chase, Appellant, &c., VERSUS *Brazillai Hathaway,* 14 Mass., 221 (1817), July Term.

Parker, J., said: "But we are of opinion that, notwithstanding the silence of the statute, no decree of the Probate Court so materially affecting the rights of property and the person, can be valid unless the party to be affected has had an opportunity to be heard in defense of his rights.

It is a fundamental principle of justice, essential to every free government, that every citizen shall be maintained in the enjoyment of his liberty and property, unless he has forfeited them by the standing laws of the community, and has had opportunity to answer such charges as, according to those laws, will justify a forfeiture or suspension of them. And whenever a Legislature has provided that, on account of crime or misfortune, the public safety or convenience demands a suspension of these essential rights of the individual, and has provided a judicial process by which the fact shall be ascertained, it is to be understood as required that the tribunal, to which is committed the duty of inquiring and determining, shall give opportunity to the subject to be heard in support of his innocence or his capacity.

It has been intimated that notice to an insane person would be of no avail, because he would be incapable of deriving advantage from it. But the question upon which the whole process turns is, whether *he is* insane; for the presumption of law is that every man is of sound mind until the contrary is proved; and it being possible that interested relatives might falsely suggest insanity

with a view to deprive the party of the power of disposing of his estate, it is essential that every possibility should be guarded against by personal notice to him when practicable, that he may expose himself to the view of the judge and prove, by his own conduct and actions, the falsity of the charge. * * *

Indeed, it would seem strange that the whole estate of a citizen might be taken from him and committed to others, and his personal liberty be restrained, upon an *ex parte* proceeding, without any notice of the pendency of a complaint, upon a suggestion of lunacy or other defect of understanding; while the depriving of the minutest portion of that property or the slightest detention of his person would be illegal upon a charge of crime, or a breach of a civil contract, unless all the formalities of a trial were secured to him by the forms of process, and the regular execution of it."

Re W. H. Lambert (Cal.), L. R. A., 55 (1902), p. 856.

Harrison, J., said:

"An examination of the foregoing provisions of the statute shows that there is no provision for giving to the alleged insane person any notice of the proceedings against him, and that under its provisions the first intimation that he may have thereof may be when the Sheriff takes him into his custody under the order of commitment. The person making the application for the commitment is not required to give him any notice thereof, nor is there any requirement that he shall be informed of the object for which the physicians are examining him." * * *

"This certificate may be made by any two physicians who have received and filed the certificate of a superior judge showing that they possess the requisite qualification. There is no limit to the number of physicians who may become such medical examiners, nor does the act authorize a superior judge to refuse his certificate to any physician who may show himself qualified therefor. No certificate is to be made unless two examiners shall find the person to be insane, but the person seeking the order of commitment is not concluded by the determination of the first examiners to whom he may apply, but is at liberty to continue his application for a certificate until he shall find two examiners who will certify to the insanity of the person. The examination is not made by them under any direction of the Judge, nor do they receive any letter of authority or power to compel testimony. The statute does not require that their certificate shall be given under oath, nor does it require that the witnesses before the examiners shall give their testimony under oath, or provide for any oath to be administered to such witnesses. They are only required to make "such examination" of the person as will enable them to form an opinion "as to his sanity or insanity," and their examination may in fact be so conducted that he will have no knowledge that they are examining him for that purpose, or even making any examination of him. * * * The statute does not require the Judge, when he passes upon their sufficiency, to give any notice thereof to the alleged insane person, or even to require him to be brought into his presence. * * *

"The provision in section 4 for a trial upon the question of his insanity is effective only after the order of commitment has been made, under which the person may have been immediately placed in the hospital, and cannot be made a substitute for his right to have an oppor-

tunity to be heard, and to defend himself against the charge before being deprived of his liberty. For the purpose of showing the inefficiency of this provision in protecting a person against an invasion of his constitutional right to a notice and a hearing before he can be deprived of his liberty, it is only necessary to read, in connection therewith, the provision that, before such trial can be had, he must provide for the payment of the costs thereof, and also the provision of section 8 in article I, of the act, that, after he has been committed to the hospital, he may be restrained of all correspondence with the outer world, except with the superior judge and the district attorney of the county from which he was committed. The statute thus clearly provides that the proceedings before the judge in a case like the present may be entirely *ex parte*, and that he may be satisfied that the alleged insane person is insane by merely examining the certificate and petition. He may issue the order of commitment upon the opinion of the two examiners, without any examination by himself of the person sought to be committed, or of the examiners who have made the certificate, and without knowledge of the facts or testimony upon which they have made their certificates. In thus acting upon these documents, he takes as the sole basis of his action the opinion of the examiners, ascertained as before shown, that the individual is insane. The opinion of practitioners of medicine, however, upon the question of insanity, are not always uniform or infallible, especially if such opinion formed *ex parte*, or without an opportunity for a full investigation of the charge. The mere certificate of an opinion thus obtained ought not to be a sufficient warrant for an order for the confinement of a person in an insane asylum. There should at least be the semblance of a judicial investiga-

tion, of which a public record can be preserved, before a person can be deprived of his liberty. * * *

It does not appear, either from the order of commitment or by the accompanying documents, that any notice was given to the petitioner of an intention to make an application for the order, or that he was ever notified or had any knowledge that the medical examiners would make any examination or investigation in reference to his sanity, or that the judge of the superior court ever directed any notice to be given him of the application, or of an intention to determine the question of his sanity; nor does it appear that he was present at the time the matter was under consideration by the judge, or was at any time seen or examined by the judge. The act in question was evidently suggested by the insanity law of New York passed in 1896 (1 N. Y. Laws 1896, chap. 545), and the provisions of that act have been closely copied. * * *

In *People, ex rel. Sullivan* v. *Wendell,* 33 Misc. 496, 68 N. Y. Supp. 948, the relator had been committed to an insane asylum under the provisions of this section, but had had no notice of the application, either personally or by substituted service on any one in her behalf, and there was no hearing at which she was either personally present or represented by any person. The court held that to the extent that the insanity law authorized such proceeding, it was in violation of the Constitution, in that it deprived her of her liberty without due process of law, and ordered her release. An order for the commitment of a person to an insane hospital is essentially a judgment by which he is deprived of his liberty, and it is a cardinal principle in English jurisprudence that, before any judgment can be pronounced against a person, there must have been a trial of the issue upon which the judgment is given. Under the laws of this State

a guardian of the person or the estate of an insane person cannot be appointed without giving him notice of the application therefor (Code Civ. Proc. § 1763); nor can a judgment for so small a sum as $5 be rendered against him unless he has been served with a summons in the action. (Code Civ. Proc. § 411.) Much more is there reason for giving him notice of an application to deprive him of his personal liberty. The provision in the statute for a notice to a relative or friend of the alleged insane person cannot be made the equivalent of a notice to the person himself. * * *

What constitutes due process of law may not be readily formulated in a definition of universal application, but it includes in all cases the right of the person to such notice of the claim as is appropriate to the proceedings and adapted to the nature of the case, and the right to be heard before an order of judgment in the proceedings can be made by which he will be deprived of his life, liberty or property. The constitutional guarantee that he shall not be deprived of his liberty without due process of law, is violated whenever such judgment is had without giving him an opportunity to be heard in defense of the charge, and upon such hearing to offer evidence in support of his defense. If his right to a hearing depends upon the will or caprice of others, or upon the discretion or will of the judge who is to make a decision upon the issue, he is not protected in his constitutional rights. *Underwood* v. *People*, 32 Mich. 1, 20 Am. Rep. 633. To say that, if he is in fact insane, therefore any notice to him would be vain, is to beg the very question whose determination underlies the right of the State to deprive him of his liberty. The fact of his insanity is to be determined before his right to his liberty can be violated. If that question is determined against him without any notice or opportunity to be heard or to in-

troduce evidence in his behalf, and under such determination he is confined in the hospital, his constitutional guaranty is violated.

The case before us does not involve the right of the State to provide for the summary arrest of a person against whom a charge of insanity is made, and his temporary detention until the truth of the charge can be investigated. Such arrest would itself be a notice to him of the charge, under which he would be afforded an opportunity for a hearing thereon. Nor is there involved the right of the State to permanently restrain an insane person of his liberty, whether such person be harmless or dangerous, but the question is whether he is entitled to a judicial investigation of the charge that he is insane, and the right to be heard thereon before its determination. The question to be determined is not whether the action of the judge in investigating the insanity of the petitioner was conducted under the forms of law, and with proper regard for his rights, but whether the Judge had the right to enter upon the investigation, or take any action whatever in reference to his sanity. * * *

"It is not enough that (he) * * * may by chance, have notice, or that he may, as a matter of favor, have a hearing. The law must require notice to him * * * and give (him) * * * the right to a hearing, and an opportunity to be heard. * * * The constitutional validity of law is to be tested not by what has been done under it, but by what may by its authority be done." *Stuart* v. *Palmer*, 74 N. Y., 188, 30 Am. Rep., 291. "It is not what has been done, or ordinarily would be done under a statute, but what might be done under it, that determines whether it infringes upon the constitutional right of the citizen. The Constitution guards against the chances of infringement." *Bennett* v. *Davis*,

90 Me., 105; 37 Atl., 865. The following authorities may be referred to in support of the foregoing views: *Underwood* v. *People*, 32 Mich., 1; 20 Am. Rep., 633. *Re* Doyle, 16 R. I., 537; 5 L. R. A., 359, 18 Atl., 159. *State* v. *Billings*, 55 Minn., 467; 57 N. W., 206, 794. *Portland* v. *Bangor*, 65 Me., 120; 20 Am. Rep., 681. *Bennett* v. *Davis*, 90 Me., 102; 37 Atl., 864. *People ex rel. Ordway* v. *St. Xavier's Sanitarium*, 34 App. Div., 363; 56 N. Y. Supp., 431. In the case last cited the question was quite fully considered by the General Term of the Supreme Court of New York. The relator had been committed to an asylum for inebriates for a term of one year under provision of a statute of that State authorizing such commitment to be made by any judge of a court of record upon a certificate in writing, signed by two physicians, containing statements bringing the person within the description mentioned in the statute. It was held that as the order had been made without any notice to the relator, and without her presence, she was deprived of her liberty without due process of law, and that the commitment was void; the Court very tersely and aptly phrasing the principle underlying its decision as follows: "No matter what may be the ostensible or real purpose in restraining a person of his liberty,—whether it is to punish for an offense against the law or to protect the person from himself, or the community from apprehended acts,—such restraint cannot be made permanent or of long continuance unless by due process of law."

Under the foregoing considerations, it must be held that the insanity law of 1897 to the extent that it authorizes the confinement of a person in an insane asylum without giving him notice and an opportunity to be heard upon the charge against him, is unconstitutional,

and that the proceedings by virtue of which the petitioner is held by the respondent are invalid.

It is ordered that the petitioner be released from the asylum.

We concur: Beatty, Ch. J., Temple, J., Henshaw, J., Garoutte, J., dissenting.

Matter of Georgiana G. R. Wendel.

The People ex rel. Maurice J. Sullivan, Relator, v. *John G. Wendel and Mary E. A. Wendel, Respondents,* 33 Misc., 496 (Supreme Court, Kings, Special Term, December, 1900).

Marean, J., said:

> "She had no notice of the application, either personal or by substituted service on some person in her behalf, and there was no hearing at which she was either present or represented by any other person. She had been finally adjudged insane and committed to perpetual restraint, without notice or hearing. She is deprived of her liberty, therefore, without due process of law (*People ex rel. Ordway* v. *St. Saviour's Sanitarium,* 34 App. Div., 363). The Insanity Law, so far as it permits this, is in violation of the Constitution."

"When one has been duly adjudged insane, when his *status* as an insane person has been duly established, personal notice, or notice of proceedings affecting his interest, may be dispensed with, if it appears that such service would be prejudicial to his mental condition. But, for the protection of those who are sane, it ought

not to be tolerated that any person should be adjudged insane, and finally committed, without either notice or actual hearing.

"It is doubtful, also, if the commitment of the alleged incompetent to the custody of her sister, even if it were valid, warranted her transfer to the hospital by the commission. The statute only permits transfers from one hospital to another.

"She is discharged."

WEST VIRGINIA SUPREME COURT OF APPEALS.

Heil J. Evans, Committee of Evan Morgan *v.* Omer B. Johnson *et al.;*
Thornton Pickenpaugh, Impleaded, etc., Appt. (W. Va.), April, 1894; 23 L. R. A., 737.

Brannon, P., said:

"The brief of appellant's counsel, in its opening, presents what in its nature is the first question for us to decide, by insisting that the plaintiff has no right to recover in this suit or any suit. The first reason given by counsel for this contention is that the appointment of Heil J. Evans to be committee of Evan Morgan as an insane person is void for want of notice to said Evan Morgan. In Lance *v.* McCoy, 34 W. Va., 416, the opinion is expressed that such an appointment by a County Court without notice, as required by Code, Chap. 58, No. 34, is void. A reexamination of this question in this case has confirmed me in the view then expressed. The question is of importance, both because of its frequent occurrence and of its effect upon persons alleged

to be insane. So far as my observation has gone, the practice has been in Clerk's Offices of the County Courts and in County Courts, to make such appointments without such notice. It lies at the foundation of justice in all legal proceedings, that the person to be affected have notice of such proceedings. *As such an appointment takes from the person the possession and control of his property and even his freedom of person, and commits his property, his person, his liberty, to another, stamps him with the stigma of insanity and degrades him in public estimation no more important order touching a man can be made short of conviction of infamous crime. Will it be said in answer to that that he is insane and that notice to an insane man will do him no good? The response is that his insanity is the very question to be tried, and he the only party interested in the issue. Often, if given notice, he will be prompt to attend and in his person be the unanswerable witness of his sanity; often, if not given notice, those interested in using or robbing him of his property will effectuate a corrupt plan. Almost as well might we convict a man of crime without notice. There is abundant authority for this position. Even though the statute be silent as to notice, as ours to appointment of committees by County Courts is, though that as to Circuit Court appointments requires notice, yet the common law steps in and requires it.*"

See Chase *v.* Hathaway, 14 Mass., 222, 224; Hathaway *v.* Clark, 5 Pick., 490; Hutchins *v.* Johnson, 12 Conn., 376, 30 Am. Dec., 622; McCurry *v.* Hooper, 12 Ala., 823, 46 Am. Dec., 280; Monroe County Suprs. *v.* Budlong, 51

Barb., 493; Eslava v. Lepetre, 21 Ala., 504, 56 Am. Dec., 266; Dutcher *v.* Hill, 29 Mo., 271, 77 Am. Dec., 572; Buswell, Insanity, No. 55; Stafford *v.* Stafford, I Mart. (N. S.), 551.

In Molton *v.* Henderson, 62 Ala., 426, held that "inquisition of lunacy without personal notice to the alleged *non compos* is void, so is the appointment by the probate court of a guardian for said lunatic, and the proceedings by such guardian for a sale of lands belonging to said lunatic." A statute authorizing an inebriate to be committed to a hospital on *ex parte* proceeding was held void by the New York Supreme Court. *Re* Janes, 30 How. Pr., 446. In Georgia the statute required notice to three relatives of the person before appointment of a guardian over him as an insane person. Judge Bleckley, delivering the opinion, thought there ought also to be notice to the person. He said: "It is, to say the least, doubtful whether the property of an adult citizen can be taken out of his custody and committed to guardianship without previous warning served either upon him, or some person duly constituted by law or some legal tribunal to be notified in his stead. If it was unreasonable in the opinion of a Roman Governor,* to send a prisoner and not signify withal the

*ACTS, CHAPTER XXV.

"(13) And after certain days King Agrippa and Bernice came unto Caesarea to salute Festus.

(14) And when they had been there many days, Festus declared Paul's cause unto the king, saying, There is a certain man left in bonds by Felix:

(15) About whom, when I was at Jerusalem, the chief priests and the elders of the Jews informed me, desiring to have judgment against him.

(16) To whom I answered, It is not the manner of the Romans to deliver any man to die, before that he which is accused have the accusers face to face, and have license to answer for himself

crime alleged against him, the law judges it to be equally so to pass upon the dearest civil rights of the citizen, without first giving him notice of his adversary's complaint. The truth is that at the door of every temple of the laws in this broad land stands justice, with her preliminary requirement upon all administrations:—*You shall condemn no man unheard. The requirement is as old, at least, as Magna Charta. It is the most precious of all gifts of freedom,* that no man be disseised of his property or deprived of his liberty, or in any way injured, *nisi per legale judicum parium suorum, vel per*

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concerning the crime laid against him.

* * * * * * *

(25) But when I found that he had committed nothing worthy of death, and that he himself hath appealed to Augustus, I have determined to send him.

(26) Of whom I have no certain thing to write unto my lord. Wherefore I have brought him forth before you, and specially before thee, O king Agrippa, that after examination had, I might have somewhat to write.

(27) For it seemeth to me unreasonable to send a prisoner, and not withal to signify the crimes laid against him."

ST. JOHN, CHAPTER VII.

"(49) But this people who knoweth not the law are cursed.

(50) Nicodemus saith unto them, (he that came to Jesus by night, being one of them,)

(51) Doth our law judge any man, before it hear him, and know what he doeth."

Judge Bleckley might further have said in his aforesaid censure of the present lunacy laws of the aforesaid "black belt of lunacy," that both the ancient Roman law and the ancient Jewish law permitted those two veritable pillars of Hercules of the absolute rights of individuals—namely the right of notice and opportunity to appear and be heard: *vide* said Acts, Chapter XXV (16) "he which is accused have the accusers face to face, and have license to answer for himself;" and again, said St. John, Chapter VII (51) "Doth our law judge any man, before it hear him, and know what he doeth."

Thus the Jews and pagan Romans set a shining example of law, justice, and equity to the foul falsely alleged laws anent lunacy procedure in said "black belt of lunacy" in which black belt the State of New York and the State of Pennsylvania take the lead for infamy.

Thus the Jews and pagan Romans set a shining example of law, justice and equity to the alleged Christian communities represented by the States making up said "black belt of lunacy"—albeit Christianity at present rather under a cloud.

We advisedly say "albeit Christianity at present rather under a

legem terrae. It is a principle of natural justice which courts are never at liberty to dispense with, unless under the mandate of positive law, that no person shall be condemned unheard." He said that in that case there was "action, trial and judgment in two days, and no previous notice." *In our practice it often occurs in ten minutes. This practice I say, as was said by the Louisiana Court in Stafford* v. *Stafford, supra, might put "the wisest man in the community under the control of a curator, and hold him up to the world as an adjudged insane."*

Both constitution and statute confer this power on the county courts as a jurisdiction. Before appointing the

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cloud" since Caiaphas the High Priest, with the whole packed and hostile Jewish Sanhedrim at his back, gave Jesus Christ a squarer deal than does the Supreme Court of New York in the case of a person accused of lunacy. Jesus Christ—according to the record was the recipient of notice—summary notice by arrest, it is true, but notice nevertheless, since said arrest was merely temporary and definite in duration, to wit, until the Court presided over by Pontius Pilate could assemble. Whereas plaintiff's summary arrest in March, 1897, was neither temporary nor definite, but [illegible] incarceration—immediate incarceration—without further inte[illegible]on of a court or opportunity to appear and be heard—in[illegible] incarceration in a cell, which was only allegedly—but re[illegible]"—inquired into at the hands of the law—as practiced [illegible] generation in the State of New York—at the arbitrary [illegible] aforesaid conspirators—the other side—*over two* [illegible]nd only then, on the evidence, because said conspira[illegible]hrough said conspirators' agent said Medical Superin[illegible]ndent of The Society of the New York Hospital said Dr. Samuel J. Lyon—that plaintiff was physically incapacitated—by spinal trouble brought on by the atrocity of having been illegally confined without trial on a false charge for over two years in a madhouse cell—was thus physically incapacitated from being present at said proceedings before said Sheriff's Jury in June, 1899, since same were held over twenty miles away from White Plains where plaintiff was—on the record-evidence—*confined to bed and had been thus confined for more than three weeks at said time.* Jesus Christ was also—according to the record—the recipient of opportunity to appear and be heard, since Jesus Christ was brought into Court.

Therefore the Supreme Court of New York afforded plaintiff—both in said proceedings in March, 1897, and in June, 1899—less opportunity to appear and be heard than did the Jews and pagan Romans afford Jesus Christ. And the trial of Jesus Christ is considered, at least by Christians, as the vilest instance of judicial tyranny of record in the annals of Christianity or Paganism.

Court must determine whether or not the fact which alone gives it power to act, exists; that is whether the party is in any of the phases or conditions of mind to be considered insane under the statute. It must inquire into the fact, and in deciding exercise judgment, and of this legal investigation, all important to him, he ought to have notice. He wants to deny the very basis of the proposed order—his insanity. It is an important transaction to him. Shall he have no notice of it? Am I told that the statute does not in terms require notice? I answer as shown in Lance *v.* McCoy, 34 W. Va., 416, as a Circuit Court cannot appoint without, so by proper construction of the Code, neither can a County Court. I answer further, that a statute will not be construed to authorize proceedings affecting a man's person or property without notice. It does not dispense with notice.

Bishop, Written Law, Nos. 25, 141.
Chase *v.* Hathaway, 14 Mass., 222, 224.
Arthur *v.* State, 22 Ala., 61.
Endlich, Interpretation of Statutes, No. 262.
Booneville *v.* Omrod, 26 Mo., 193.
Wickham *v.* Page, 49 Mo., 526.

Chief Justice Marshall held void a judgment of even a court martial imposing fines on militia men because without notice.

Meade *v.* Deputy Marshal of Virginia Dist., 1 Brock, 324 Fed. Cas., No. 9, 372.

This statute is one of summary proceeding.

If the case were one of mere error or irregularity, it

might be said that the order was good against collateral attack, and must be reversed by a direct proceeding; but the question is one of jurisdiction—a want of authority to make the order for want of jurisdiction over the person to be affected. How can his property be affected or title given the committee to enable him to sue for it, if the order is void as to the person? If he is not affected by it how is his property? If the committee would restrain the person of the *non compos*, could he not release himself by treating the order as void? I cannot see how the order of a clerk fixing the personal status of a person, without notice, can rob him of his property and vest title in another person. A tribunal may have jurisdiction of cases *ejusdem generis* with the matter involved in a proceeding before it, and it may have jurisdiction of the particular matter involved in that particular case; but if it have no jurisdiction of the person, by service of process or appearance, if the proceeding is not *in rem* it cannot go on. Though the Taylor County Court has jurisdiction to appoint committees for insane persons, and though it has lawful jurisdiction to act on the matter of the appointment of a committee in the particular instance of Evan Morgan yet it could not act without notice to him, unless we say notice was not required by law, which I have above sought to show is not the case. A sentence of the Court without hearing the party, or giving him an opportunity to be heard, is not a judicial determination of his rights, and is not entitled to any respect in any other tribunal. Jurisdiction is indispensable to the validity of all judicial proceedings. Jurisdiction of the person as well as the subject-matter are prerequisites and must exist before a court can render a valid judgment or decree, and, if either of these is wanting all the proceedings are void. So the Court said literally in

Haymond *v.* Camden, 22 W. Va., 180, syl. Nos. 5, 9. So it has often held, as shown by Judge Green in the opinion McCoy *v.* McCoy, 29 W. Va., 807. No Court has more steadily held the rule of necessity of process or appearance than this Court, whether as to proceedings of superior or inferior Courts. Must there be a process before a superior Court can render merely money judgment, and yet no notice before a Clerk can stamp a man with insanity, and take from him his property and freedom of person? * * *

When we say there must be jurisdiction, we mean both that the matter must be within the jurisdiction of the Court and the person to be affected, by service of notice upon him, Cooley, Const. Lim., 403. I maintain that such action as the appointment of a committee for one as insane without notice, being so grave in its effect upon his personal status, his right to vote, liberty and property, is not due process of law. It violates the defining by Mr. Webster in the Dartmouth College case, generally received as a proper one of due process of law, that 'it hears before it condemns.'

The decree is reversed and the bill is dismissed, without prejudice to any other suit by Evan Morgan or any lawful committee. No prejudice against the collection of the debts shall result from this decision."

Hinchman v. *Richie.* (April 9, 1849.)
1 Brightly's Reports, 144.
Note, p. 180.

No one, however, has a right to confine an insane person for an indefinite period, until he shall be restored to reason, but upon compliance with the formalities of the law. *Colby* v. *Jackson*, 12 N. H. 526. * * *

Krause, President, said: "The 6th section requires

the court to direct notice, either to the party to whom the commission shall issue or to some near relations or friends, who are not concerned in the application, and the object being to procure a defense when that may reasonably be made, it is obvious that such as counsel a finding against the defendant, or desire it, are excluded from that list of persons, as ineligible to stand in his stead. For some purpose or other this direction was not asked of the court; and notice was not given by the commissioner. * * *

Nor was he himself summoned beforehand or brought in at the time to be present at the examination of the witnesses, on whose testimony he was pronounced incapable of exercising the rights and duties of husband, father and citizen. He was in fact not present for any purpose of defense, but for exhibition merely—a conclusion that is forced on the mind by the whole course of conduct; for the witnesses had been heard when he was called into the room; his desire to have friends and counsel to aid him was disregarded, and the business affecting all his high interests was concluded after he had been removed. In *ex parte* Cranmer, 12 Ves. Jr. 455, Chancellor Erskine says: "the party must certainly be present at the execution of the commission; it is his privilege;" and such must be the construction of our statute, except where, from the necessity of the case, it is impracticable to give literal force and operation to the principal, as in the state of facts instanced in the third division of the second section, by which a commission may be executed against an inhabitant of the State, who is absent from it, in the county containing his real estate. But that is justified upon the ground of its being a purely beneficial measure, to save the property from impending mischief; and to prevent oppression, the court exacts ample proof that such is the object, and

directs extraordinary efforts to be made, by publication or otherwise, to reach the party with notice.

Mary Smith v. *Stephen Burlingame*, 4 Mason (R. I.) 121, November Term, 1825.

Story, J., said: "My opinion is that the objection is fatal. The Courts of Probate have no right to put a person under guardianship, as unfit to manage her affairs, without notice to the party, and on adjudication on the facts; and until such adjudication, no letters of guardianship can legally be issued. The case of *Chase* v. *Hathaway* (14 Mass. R. 222), is directly in point, and with that case I entirely concur."

Wait v. *Maxwell*, 16 American Decisions, 391. (5 Pickering, 217.)

Parker, C. J., said: "The decree of the court of probate, granting letters of guardianship, is void, because it does not appear that any notice was given to the subject of it before the inquisition taken; nor is there any judgment or decree ascertaining that she was *non compos mentis*."

In *McMurray* v. *Hooper*, (Ala.) 46 Am. Dec. 280, the Court said:

"I think it is a very fundamental principle of justice essential to the right of every man, that he should have notice of any judicial proceedings which is about to be had for the purpose of divesting him of his property or the control of it, that he may appear and show to them who sit in judgment on his rights that he has not lost them by the commission of a crime, and that they should not be taken away from him by reason of a supposed misfortune. That he has a *right* to appear before the jury and the court, to show that he is not insane and that

he and his property should not be put in charge of another, is self-evident and *is denied by no legal authority.*"

So, in *Hutchins* v. *Johnson,* (Conn.) 30 Am. Dec. 624, the Court said:

"Notice of such proceedings (*de lunatico inquirendo*) so important to the subject, is required by the *fundamental principles of justice.*"

And in the case of Mays, 10 Pa. County Ct. Reports 293, this language was used:

"But, in whatever way we regard it, the necessity for notice faces us, and, if it has not been given, the proceedings cannot for an instant be maintained."

The text writers also enunciate the same principle in insanity cases. Thus, in Buswell on Insanity, section 55, it is said:

"In the United States it is generally held that the party alleged to be insane has the *right* to have notice, *and to be present* at the proceedings instituted for determining the issue of sanity."

And in Cuming and Gilbert on the "Poor, Insanity, etc., Laws of New York," at page 173, it is said:

"Under a constitutional government no person can be deprived of life, liberty or property, without due process of law, and, therefore, no person can be lawfully declared insane and his personal liberty permanently restrained without formal proceedings and an opportunity afforded him to appear personally and with witnesses to refute the allegations of the person seeking to deprive him of his liberty."

But the very question was recently considered by the

Appellate Court of the State of New York, in a case so similar to the one presented by plaintiff that it must be considered as conclusive. It was the case of *The People, ex rel. Elizabeth Ordway* v. *St. Saviour Asylum*, reported in 34 App. Div.

Elizabeth Ordway was induced by her family and her friends to take some steps to be confined and treated for inebriety. It was arranged that she should permit herself to be committed to St. Saviour Asylum for one year for the purpose of treatment. Proceedings were had under the statute and she was committed by the court to St. Saviour for the period of one year, unless sooner discharged by the Trustees at that institution. *There was no notice of the proceedings served on Miss Ordway.* She, however, was fully cognizant of the proceedings and they were had with her consent and permission and in pursuance of the commitment order she gave herself up and entered the asylum.

After she had been there for some time, she decided that she desired her freedom again. The Trustees refused to discharge her and she sued out a writ of *habeas corpus*. The Trustees replied by a return showing the record of the proceeding under which she was placed in their custody. Counsel for Miss Ordway demurred to the return, arguing that the proceedings were void as being in contravention to the constitutional provision requiring due process of law: The court sustained the demurrer, held the proceedings void and restored Miss Ordway to freedom. The Court, at page 370, said:

"No matter what may be the ostensible or real purpose in restraining a person of his liberty, whether it is to punish for an offense against the law or to protect the person from himself or the community from apprehended acts, such restraint cannot be made permanent or of long continuance unless by due process of law.

* * * We refer to that process by or under which a person is detained for a definite period of time * * * and not to that summary process which issues to take in custody a supposed or alleged dangerous or incompetent person, and under which he may be detained *until an investigation in the ordinary course of law may be had,* * * * but where a person is confined by what is upon its face *final process* and by which he is consigned to incarceration or restraint of his person by adjudication for a long period, that is to say, by a judgment claimed to be binding upon him, there is not due process of law, unless he has had notice and a hearing, or at least such a hearing as implies notice."

Again on page 371, the Court said:

"A hearing or an opportunity to be heard is absolutely essential; we cannot conceive of due process of law without this."

And on page 372:

"The statute now under consideration goes far beyond the condition of danger. It subjects the person to restraint *not during periods of danger,* but for a year if the judge so orders, and for treatment and reformation. * * * What reason exists why a person alleged to be incompetent or dangerous should not have an opportunity before judgment finally against him confining him for a long period of time, which he cannot shorten to contest the charge, as much as a person accused of crime? The rights of one are as sacred and inviolable as of the other. * * * Shall *ex parte* proof that would only avail to *hold an alleged criminal for trial* be regarded as conclusive proof against a supposed unfortunate?"

Continuing on page 373, the Court says:

"Acts of the Legislature which go beyond the allowance of *temporary confinement* and restraint *until trial or hearing* may be had, and the accused person have

his day in court in some way customary or adequate to enable him to present his case, are invalid exercise of legislative power. * * * It surely cannot be said that the procedure authorized by the act under which this relator was committed and which created the wrong is due process of law simply because the Legislature chose to authorize that procedure."

And the Court concludes its able opinion as follows:

"We are of the opinion that the commitment under which this relator is held is not due process of law, and that proceedings under the act, so far as they result in restraint for a year *or less period* of time depending upon the discretion of those who retain the relator, are invalid, for the reason that *no notice was given by which she might in the proceedings itself by immediate intervention or subsequent opportunity to intervene, be heard in resistance of the accusation made against her.*"

Applying the language of this decision to the case under consideration, we find that it fits every circumstance that is essential.

1*st.* The proceedings were on their face final.

2*nd.* It was not temporary in character, ordering a commitment for safety until a hearing—it recites that the order was made *after a hearing.*

3*rd.* There was no notice to plaintiff of the proceeding—it was specifically dispensed with—and plaintiff had no opportunity "in the proceeding itself" to be heard in defense of his rights."

The conclusion is, therefore, inevitable that upon the authority of the decisions cited above, and particularly of the decision in the Ordway case, the proceedings in the Chaloner case were absolutely void for want of notice which is required by due process of law, provided for in the Constitution of the United States. And the mere fact that the Legislature, in the act under which the

proceedings were had, provided for such proceeding without notice does not alter the legal effect of such proceedings when had *without notice.*

POINT 10. The said Proceedings were void for the following reason, to-wit. They were summary. Lunacy proceedings in New York State are mandatory, in derogation of common law rights, and must be strictly observed in pursuance of the statute. While said commitment was in fact made to the Society of the New York Hospital, it was not so stated; the term Bloomingdale Asylum being used, an institution unknown to the law.

The said proceedings were void for the following reason:

A flagrant breach of Section 60 of Chapter 545 of the laws of 1896 was committed in said proceedings, to wit. The cover of said Commitment Papers (Transcript of Record, p. 104) contains the following, to-wit: "State of New York—State Commission In Lunacy Petition, Certificate of Lunacy and orders. This blank, consisting of five parts, is furnished by the State Commission in Lunacy, pursuant to Section 60 of Chapter 545 of the laws of 1896, which, among other things, provides as follows: "*The Commission shall prescribe and furnish blanks for such certificates and petitions which shall be made only upon such blanks.*" * * * "The blanks should be carefully read and properly filled out to insure the commitment of a patient." After such a mandatory and particularized and italicized warning regarding a regular and legal form of procedure in filling out said blanks, it is reasonable to assume that said blanks would in each and every case be so filled out. But in plaintiff's case a gross irregularity occurs three times. Once upon the back of the cover of said Commitment Papers (p. 114). Once upon line 155 therein,

and once again upon line 350 therein. Moreover the two latter gross said irregularities are made in defiance of italicized mandates. In said first of said two instances —said italicized mandate line 156 is as follows, to wit: (*It is essential that the official title of the institution should be correctly inserted*)," p. 109. In accordance with said mandate the following should have appeared upon said line 155: "The Society of the New York Hospital." In place of said official title appears, however, the fancy name of *"Bloomingdale Asylum, at White Plains."* In said record of said two instances of gross irregularity and italicized mandate, line 349 is as follows, to wit: (*"Insert, correctly, official title of institution.*)" Whereupon we discover that said first of said two instances, of gross irregularity, presents a new phase of gross irregularity in addition to said first gross irregularity's original grossness, to wit. In place of finding upon said line 350 "The Society of the New York Hospital," which, if law's mandates mean anything, should have been there, and, astounding though it sounds, in place of finding what should have been there if consistency even in irregularity can aid in showing an honest error, to wit, *"Bloomingdale Asylum at White Plains," what do we find?* We find that said gross irregularity, said *"Bloomingdale Asylum at White Plains,"* has, so to speak, undergone a metamorphosis taken on a new shape, and now stands forth as "Bloomingdale *Insane* Asylum at White Plains, *N. Y.*," to which phantom institution, so to speak, to which illegally designated concern plaintiff was duly committed, for two lines further down, line 352 (p. 113), appears the following, "Signed, H. A. Gildersleeve"; and on line 353 "Justice Supreme Court, State of New York." Incredible as it sounds said metamorphosed said gross irregularity said *"Bloomingdale Insane Asylum at*

White Plains, N. Y." upon said back of said cover of said Commitment Papers experiences, so to speak, a second metamorphosis, and now dwindles into "*Bloomingdale, White Plains, N. Y.*" If it is true, as said mandate reads, said line 11, "The blanks should be carefully read and *properly filled out to insure the commitment of a patient,*" and if it is furthermore true, as said mandate reads, ("*It is essential that the official title of the institution should be correctly inserted.*") said line 156, then it is also true that a failure to properly fill out said blanks fails to insure the commitment of a patient; and, furthermore, it is also true that if it is *essential* that the official title of the institution should be correctly inserted it is essential. If the above is correct, it follows inevitably that said failure to insure the commitment of the patient did fail to secure said commitment through said failure's being in its nature *essential.*

The same gross irregularity is repeated frequently in the Proceedings in 1899. To take only three of said instances, which from the said instances importance in said proceedings stand out boldly. The said myth of "Bloomingdale" is passed along and given a helping hand by Lawyer Candler of the other side, in said proceedings. In said Candler's examination, *supra,* of said Carlos F. McDonald, said Candler says: "Have you visited him (plaintiff) in the Bloomingdale Asylum for the Insane?" (Transcript of Record, p. 120). Small wonder that the public is fooled, and regards "Bloomingdale" as a public institution more or less eleemosynary in its nature when said Society of the New York Hospital winks at infractions of the law regarding the correct name of the institution to be inserted in all Commitment Papers, and so sails like a pirate under false colors—with Commodore Elbridge T. Gerry at the

wheel and the Hon. Joseph Hodges Choate—so to speak —first mate.

The same irregularity occurs four times in the affidavit filed June 23rd, 1899, with the Decretal Order by Egerton L. Winthrop, Jr., of the said firm of Jay and Candler (pp. 136-137), to wit: "John Armstrong Chanler * * * from Bloomingdale Asylum." Again "the said John Armstrong Chanler had been committed to the Bloomingdale Asylum for the insane." Lastly "Dr. Samuel B. Lyon, the Superintendent of the Bloomingdale Asylum for the insane."

The same irregularity occurs twice in the said decretal order of said Judge Henry A. Gildersleeve (p. 136), filed and recorded June 23rd, 1899, a certified copy of which we exhibit to wit: "Dr. Samuel B. Lyon, the person in charge of Bloomingdale Asylum." Lastly, "He (said John Armstrong Chanler) was committed to the Bloomingdale Asylum, White Plains."

"It has been held that Statutes providing for the examination, commitment, and custody of insane persons are mandatory, and must be strictly pursued: Meurer's Appeal, 119 Pa. St., 115; *State* v. *Baird,* 47 Mo., 301; *Territory* v. *Sheriff of Gallatin County,* 6 Mont., 297, *Note* 43 Am. St. Rep., 531.

POINT 11. The Proceedings in New York City, in 1899, before a Commission and a Sheriff's Jury to declare plaintiff an incompetent person *in absentia,* plaintiff never being before the jury or represented in Court in any way, were void *in toto,* for they were without due process of law and therefore unconstitutional for the following reasons. (*a*) There was lack of proper notice, for plaintiff being at the time in duress of imprisonment, illegally confined under a void proceedings, and without access to counsel, the so-called notice was no notice

at all.* The Supreme Court of New York had in effect civilly murdered Chanler. It had in effect illegally rendered him civilly dead—an insane person is *civiliter mortuus*—it had, so to speak, placed him in his coffin, and in the act of nailing down the lid and consigning him to the tomb—the proceedings to appoint a committee of his person and estate—served notice on his corpse to be present at the said ceremony. He having been rendered physically incapable of observing said summons by the said illegal act of said Supreme Court which said act had, by confining him for two years in a madhouse cell, rendered him for the time bed-ridden, as the experts in the pay of the other side virtually admit. Said proceedings in 1899 being in point of fact conducted in plaintiff's absence through plaintiff's said enforced physical inability to be present thereat were therefore also, in like manner, as said proceedings in 1897—truly and typically *ex parte* and therefore utterly void. (*b*) *There was lack of opportunity to appear and be heard.* For plaintiff, upon the sworn testimony of the medical men in the pay of the Petitioners, was incapacitated from coming to Court, plaintiff being in bed with an affection of the spine at the time of said trial, and having been so for more than three weeks previous thereto.

Said Subsequent Proceedings to Appoint a Committee.

Plaintiff was confined in the Asylum of "The Society of the New York Hospital" at White Plains, New York, from March 13th, 1897, until May, 1899, before any

*A sinister point in this case, and one whose influence saturates the entire proceedings with a taint of wrong intolerable to law, is the fundamental fact that a citizen of a foreign State was lured into the State of New York, with a view to subjecting said citizen to the jurisdiction of the New York courts.

steps were taken to have plaintiff declared incompetent and to have a committee of plaintiff's person and estate appointed. And it must be noted that this detention was an illegal one, *absolutely* void, that plaintiff was UNDER DURESS OF IMPRISONMENT.

In May, 1899 (Transcript of Record, p. 78), a petition was filed by two of plaintiff's brothers, Messrs. Winthrop Astor Chanler and Lewis Stuyvesant Chanler, aforesaid, to have plaintiff declared an insane and incompetent person by a Sheriff's jury, and a committee appointed for plaintiff's person and estate.

It appears by the record of said subsequent proceedings that an order was entered on the 9th day of May, 1899, requiring:

"Notice of the application prayed for in said petition be given in the following manner, a copy of this order and of the said petition, affidavits and notice of motion shall be served upon the said John Armstrong Chanler, the alleged incompetent person, personally * * * by delivering the same to him in person."

It was also provided that other members of his family, not petitioners, should be served with like notice.

Under this order the following notice was issued to plaintiff (p. 79):

"Please take notice that upon the annexed petition and annexed affidavits, a motion will be made at a Special Term, Part 1, of the Supreme Court, State of New York, held at the County Court House in the Borough of Manhattan, in the City and County of New York, on the 19th day of May, 1899, at ten and a half o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard for an order that the prayer of the said petition be granted, and for such further and other order as shall be proper in the premises."

This notice was served by William White Whittaker,

a clerk in the office of Messrs. Jay and Candler, as appears from his affidavit, in said certified copy of proceedings 1899, by delivering to plaintiff a copy thereof, at said "Society of the New York Hospital," White Plains.

On the 19th day of May, 1899, the Court entered an order for the appointment of a commission *de lunatico inquirendo* (Transcript of Record, p. 92).

On the 23rd of May, 1899, the appointment of the three Commissioners was issued, and they were instructed "to make inquisition into the facts hereinbefore recited." The Commissioners were also directed to (pp. 92-93)

"cause previous notice of the time and place of execution of this notice to be given to the said John Armstrong Chanler and to Doctor Samuel B. Lyon, the person having charge and care of him * * * and that whenever you shall so demand, the said Doctor Samuel B. Lyon shall produce before you and a jury the said John Armstrong Chanler to be inspected and examined by you and the said jury, but that in your discretion you may dispense with the attendance of the said John Armstrong Chanler before you and the jury unless the jurors some or one of them shall require the attendance of the said John Armstrong Chanler before the jury."

In the pursuance of this order the three commissioners qualified and issued the following notice (p. 100):

"Please take notice that a commission heretofore issued out of under and by order of the Supreme Court dated the 23rd day of May, 1899, to inquire whether John Armstrong Chanler is an incompetent person and by reason of which infirmity he is incapable of managing his person and property and to us directed as com-

missioners, will be executed at the County Court House in the Borough of Manhattan and City of New York on the 12th day of June, 1899, at four o'clock in the afternoon of that day."

By the affidavit of William White Whittaker it will appear that this notice was likewise served on plaintiff at said "Society of the New York Hospital," White Plains, and upon said Dr. Lyon at the same place. (p. 100.)

The commissioners then proceeded on the 12th day of June, 1899, to inquire into plaintiff's mental condition. Plaintiff was not present at the proceedings and the attorneys for the petitioners stated that they would not produce him unless ordered so to do by the commissioners. (pp. 101-102.)

The commissioners did not at any stage of the investigation order plaintiff to be produced, nor was there any person present in plaintiff's behalf authorized in any way to represent plaintiff. Doctor Lyon, who testified, stated distinctly that plaintiff did not wish him (Lyon) to represent him in the proceedings (p. 115). He stated that said plaintiff was physically incapacitated from being present before the jury. And upon further examination said Dr. Lyon stated that plaintiff would be temporarily injured mentally and physically by his production before the jury.

Upon this statement and similar statements by the other physicians who testified the jury brought in its verdict that John Armstrong Chanler was incompetent to manage his person or his affairs (p. 136). Plaintiff was never before the commissioners or the jury. This is the statement of the facts of the second proceedings and the question arises as to the legal effect of the same.

We have seen in our examination of the first proceedings that *notice* to the alleged insane person of any proceedings permanently affecting his liberty or property,

an opportunity to be heard in defense of his rights, are essential features of that due process of law that is required by the Constitution of the United States.

Undoubtedly said second proceedings *did* effect, and *permanently,* the liberty and property of plaintiff. It was a final proceeding.

Undoubtedly the notice that was served upon plaintiff advised plaintiff of said second proceedings.

It now remains to examine the question, What is the effect of such notice when given to a person under duress and who is not actually produced at the hearing?

OPPORTUNITY TO BE HEARD.

The whole purpose of notice, as required by the statutes, and by the decisions under the due process clause of the Constitution, is to give opportunity to the defendant or respondent to appear and defend his rights. The plain language of the text-writers and decisions of courts is that the defendant in any proceeding is entitled to NOTICE AND AN OPPORTUNITY TO BE HEARD.

The above proposition is sustained by the following excerpts from five leading cases, as well as by the following excerpt from a full note on "Due Process of Law as applied to Insane persons." 43 American State Reports, 531. Followed by numerous other excerpts from leading cases.

In *Brown* v. *Board of Levee Commissioners,* 50 Miss. 468, Simrall, J., said: "The term under consideration (due process of law) refers to certain fundamental rights which that system of jurisprudence of which ours is a derivative has always recognized. If *any of these* are disregarded in the proceedings by which a person is condemned to the loss of life, liberty or property, then the

deprivation has not been by 'due process of law'."
Am. and Eng. Ency. of Law, p. 296, n. 2.

"* * * the most satisfactory definition (due process of law) is that it secures to every one the right to have notice of any proceeding by which his rights of life, liberty or property may be affected, and to be afforded an opportunity to defend protect and enforce such rights in an orderly proceeding adapted to the nature of the case."
Am. and Eng. Ency. of Law, p. 296, and ca. ci.

John L. Bethea, Adm'r. of Susannah Robinson, dec'd, against *Alexander McLennon.* 23 North Carolina Reports 1840, page 523, 526-7. (Iredells Law Vol. 1.) (*supra*).
The Court held: "It is true, that the lunatic is entitled to be present before the jury; and if they deny his right, such denial would be sufficient cause for setting aside the inquisition."

Stafford v. *Stafford,* 6 Martin's Rep. 643. (*supra.*)

Porter, J., said: "But if, on the contrary, the petition of interdiction is solicited, from malice, or through error, against one of sound mind, it is not perceived by us why the proceedings should be carried on, without his knowledge. So far from it, that we think it indispensable he should have the opportunity afforded him to hear and confront those, who by their evidence are about to deprive him of all control over his actions, and take from him the enjoyment of his property. The defendant had a right to demand in the appellate court, legal proof of her insanity, and that legal proof was not furnished by testimony taken out of her presence. The principles

on which this case has been supported might place the wisest man in the community under the control of a curator, and hold him up to the world as an adjudged insane."

In Re William M. Bryant, 3 Mackey, 489. (*supra.*)

Counsel said: "Due process of law, as defined by the courts and by the law-writers, does not mean, the certificate of two physicians and the request of a sister. It means laws which hear before they condemn, and render judgment only after trial. It cannot be a police regulation, independent of the judiciary and entirely under the control of the Legislature. This would enable the Legislature to deprive the citizen of his liberty, without the intervention of the judiciary or any other department of the government." 4 Wheat, 519. * * *

The Court of Maryland (Chancellor Bland) said: "Generally and technically speaking, those only are considered lunatics who have been so found and returned; without an inquest and return thereon, no one can be judicially treated as a lunatic and be debarred of his liberty, or have the management of his property taken from him. The power to divest a citizen of his personal freedom and of his property, is one of the most extraordinary and delicate nature; and should, therefore, never be exercised without observing every precaution required by the law." Rebecca Owings' Case, 1 Bland Ch. Rep. 290. * * *

Mr. Justice James said: "* * * One of the terms for admission is that two physicians shall certify to the insanity of the party. But that does not do away with the necessity of a proper judicial ascertainment of the

fact of insanity. The provision for the physician's certificate only contemplates the fact that a person may have been found insane by a jury on inquiry, and yet may have become sane again, and, therefore, the certificate is to show that the insanity has not ceased. As a matter of interpretation, the statute is merely permissive. It gave no power to seclude a person *in invita* who has not been judicially found to be insane. * * *

"There must be a regular adjudication of the question by due process of law, without which even the Chancellor cannot act; and due process of law in establishing the insanity of a person has long been declared to be by inquiry through a jury. * * *

"The deprivation of the liberty of a citizen upon the ground of lunacy is a matter of very grave importance, because it may easily happen that for fraudulent purposes, perhaps with a view to deprive a person owning property of his control over it, a perfectly sane man might be sent to an asylum by his relatives, upon a certificate of two physicians, and be illegally confined there for years."

Due Process of Law as Applied to Insane Persons, 43 American State Reports, 531. (Note.)

It is a fundamental principle of both State and National Constitutional Law and that no man shall be deprived of "life, liberty or property" without "due process of law," and under the express provision of the Fourteenth Amendment to the Constitution of the United States, no State shall deny "to any person within its jurisdiction the equal protection of laws." The right of personal liberty is thus jealously guarded by constitutional law, *and we are unaware of any distinction between the civil rights of a sane person, and those of an*

insane subject of the government. Nor shall there be any. *Persons, though insane, are still human beings, and laws which provide for their commitment to hospitals for proper care and treatment, mark, it is said, the vast difference between civilized free people and a savage nation.* Such laws are common, but it must be observed in connection with them, that all power over the person is liable to abuse. The deprivation of the liberty of a citizen upon the charge of insanity, is a matter of very grave importance, *because it may easily happen that for fraudulent purposes, perhaps with a view to deprive a person owning property of his control over it a perfectly sane man may be sent to an asylum by his relatives, upon certificates of physicians merely, and be illegally confined there for years.* The civil rights of insane persons do not seem to have been often adjudicated by the Courts, and a close search for authorities reveals the facts that, since the ratification of the Fourteenth Amendment, in July, 1868, its doctrines as applied to such persons have seldom been defined. *Enough is gleaned from the authorities, however, to show that insane persons have rights that the mere existence of the fact of insanity does not take away or abridge the rights of a citizen, and that a person charged with insanity cannot be deprived of his civil rights without the formalities prescribed by law.* * * *

Commonwealth v. *Kirkbride*, 2 Brewst. 400, 419; and it has been held that statutes providing for the examination, commitment and custody of insane persons are mandatory and must be strictly pursued; Meurers Appeal, 119 Pa. St. 115: *State* v. *Baird*, 47 Mo. 301; *Territory* v. *Sheriff of Gallatin County*, 6 Mont. 297. If "due process of law" means the regular and orderly course of judicial proceedings in the administration of justice it would also seem clear that a determination of

insanity is not conclusive, without the person charged with being insane has had notice and opportunity to be heard either in person or by counsel, an opportunity to produce witnesses, and to confront those seeking his retirement to an asylum or hospital, and in general to make whatever defense may be justified by the circumstances of the case. * * *

In the class of cases under consideration "due process of law" undoubtedly means, "in the due course of legal proceedings, according to those rules and forms which have been established and for the protection and private rights"; *Burdick* v. *People*, 149 Ill. 600; 41 Am. St. Rep. 329. It means, at least some legal procedure, in which the person proceeded against, if he is to be concluded thereby, shall have an opportunity to defend himself: Doyle Petitioner, 16 R. I. 537; 27 Am. St. Rep. 759. For example, a state statute which authorizes the placing of insane persons in certain hospitals or asylums within the State by their parents, guardians, relatives or friends, or if paupers, by the overseers of the poor, upon certificates of their insanity, made by two practicing physicians of good standing, and which provides that when placed in hospitals or asylums they may be lawfully received and detained therein, until discharged in one of the modes provided in the statute, where such statute does not provide a procedure by which the person confined can, as of right, defend himself, is void, being in conflict with the due process clause of the national constitution: Doyle, Petitioner, 16 R. I. 537; 27 Am. St. Rep. 759.

The arrest of a person upon the charge of insanity for the purpose of confining or committing him in an insane asylum is, strictly speaking, not an arrest in either a criminal or civil proceeding, but is one sui generis, *and ought not, in this day of regard for personal liberty,*

to be allowed otherwise than upon information on oath, and an order made directing the alleged lunatic to be brought before the Court for examination. * * *

All reason in favor of confinement without legal investigation assumes the person to be insane. *The question of insanity is the very one to be adjudicated.* The question as to whether, in doubtful cases, an inquisition to determine the insanity of a person is a prerequisite to his confinement in an asylum came up in the case of Van Deusen *v.* Newcomer, 40 Mich., 90.

The Court was equally divided, two of the Justices holding that it was necessary, and two of them that it was not. In this case, Mrs. Newcomer, the defendant-in-error, being at the passenger house of the Michigan Central Railroad at Albion, was, on October 1st, 1894, forcibly taken and put aboard the cars of that railroad and removed to the Michigan Asylum for the Insane at Kalamazoo, where she was restrained of her liberty until August 4th following. The persons chiefly instrumental in procuring this confinement were her son-in-law and his mother, with whom she had difficulty, but her daughter gave consent. A person having no more legal authority than that which might be claimed for any citizen accompanied her on the cars and to the asylum. The reason assigned for removing Mrs. Newcomer to the asylum was her insanity. There had been no judicial finding of the fact, and it was not made to appear that there were any such manifestations of mental delusions as indicated danger to others. The plaintiff-in-error was, at that time, in charge of the asylum, and he received and detained Mrs. Newcomer in the full belief that she was insane. It was not shown that the medical and other assistants in the asylum believed her to be insane while she remained there. On being discharged from the asylum Mrs. Newcomer

brought suit for false imprisonment, and recovered six thousand dollars damages. Mrs. Newcomer claimed never to have been insane at all, and the contest in the Court below was mainly over the question of fact. The defendant's theory was that the restraint of insane persons in asylums is lawful, and being lawful, the placing of them, whether for their own benefit or for the protection of others, is in itself "due process of law," even in the absence of any judicial investigation into the question of sanity. *While this theory was approved by two of the Justices, it was disapproved by Justices Cooley and Campbell. The former, in his opinion, pointed out difficulties in proceeding without judicial inquiry, showing that the law should not tolerate the forcible taking and detention of one in an insane asylum upon the mere assertion that he is mentally unsound; that secret investigations into cases of this character should be frowned down, that safety lies in the publicity of the proceedings; and that while it is no doubt true, a public trial of the fact of insanity would be more or less exciting and disturbing to a mind already in a diseased or abnormal condition, it is by no means certain that the consequences would be more serious than those likely to follow from the sudden arrest or the removal for confinement in the asylum of a person who believes himself to be perfectly sane. "An insane person," said the astute Justice, "does not necessarily lose his sense of justice or his right to the protection of the law; and when he is seized without warning and without the hearing of those whom he might believe would testify in his behalf, and delivered helpless into the hands of strangers, to be dealt with as they may decide within the limits of a large discretion, it is impossible that he should not feel keenly the seeming injustice and lawlessness of the proceeding." "Nothing but actual in-*

sanity," said Campbell, C. J., "will authorize the seclusion of one who makes known his objections, and claims against reception. If no objection is made by a sane person to his own seclusion he cannot complain of it afterward. The authorities are uniform that there must be consent or actual insanity" (Van Deusen *v.* Newcomer, 40 Mich., 90, 142; Anderson *v.* Burrows, 4 Car. & P., 210; Rex *v.* Turlington, 2 Burr., 1115; Hall *v.* Semple, 3 Fost. & F., 337; Fletcher *v.* Fletcher, I El. & E., 420; Look *v.* Dean, 108 Mass., 116; 11 Am. Rep., 323; Colby *v.* Jackson, 12 N. H., 526).

Insanity has a multitude of forms, and while a dangerous maniac may be restrained temporarily, even by a private citizen, without warrant, until he can be safely released or arrested upon legal process, or committed to an asylum under legal authority, this is not the case in the milder forms of insanity, and even the desire to promote the welfare of the unfortunate individual does not justify an arrest, for nothing is more harmless than some of the milder forms of insanity. The right of personal liberty is deemed too sacred to be left to the determination of an irresponsible individual, however conscientious. The law gives insane persons the safeguards of legal proceedings, and the care of responsible guardians (Kelcher *v.* Putnam, 60 N. H., 30; 48 Am. Rep., 304).

It has been held that a commission to examine a person alleged to be an imbecile, etc., issued without the requisite notice, and neither preceded nor followed before judgment by the appointment of a guardian *ad litem*, is not aided by the presence of the imbecile and his representatives by counsel, even when the counsel gives his consent to the judgment appointing the guardian, it appearing that the commission issued one day was executed the next, and that the judgment appoint-

ing the guardian followed immediately. "The object of notice," it is said, "is that there may be due warning to make objection for legal cause to *the commission* or any of the Commissioners as well as to prepare for adducing evidence on the main question" (Morton *v.* Sims, 64 Ga., 298).

> *"We have always understood that no judgment of a Court is supported by due process of law if rendered without jurisdiction of the subject-matter and notice to the party, but some of the Courts have not been over strict in applying the doctrine of notice to cases of insanity. The very object of requiring notice to be given to a party charged with insanity or of requiring him to be produced in open Court where possible, would seem to be designed to prevent fraud in the procuring of verdicts of insanity without affording the defendant an opportunity of being heard.* * * *
>
> *"Attempts by interested persons to get control of the person and property of another by the aid of lunacy proceedings, or proceedings on the ground of habitual drunkenness are not infrequent, and no precaution should be omitted which may apprise the party of the proposed action, and enable him to appear and defend. The authorities and text-writers assume that the party proceeded against should have notice of the time and place of executing the commission."*

Statutes requiring a party charged with insanity to be produced in open court, when possible, are designed to prevent fraud in the procuring of verdicts of insanity without affording the defendant an opportunity of being heard: *Fiscus* v. *Turner*, 125 Ind. 46, *ibid.*

Remedies * * * One illegally committed as an insane person may move to set aside the inquisition for insufficiency of the evidence or other material matters: *In re Perrine,* 41 N. J., 409; or he may be discharged on *habeas corpus: Territory* v. *Sheriff of Gallatin County,* 6 Mont., 297; *Doyle Petitioner,* 16 R. I. 537; 27 Am. St. Rep. 759. Or an action for damages will lie for a malicious prosecution on a charge of insanity which results in committing to an asylum one who is not insane. The order of commitment in such a case is not conclusive evidence against the plaintiff of his insanity at any time, or of probable cause for the prosecution: *Kellogg* v. *Cochran,* 87 Cal. 192. In an action by such a person, for false imprisonment the broadest latitude should be allowed in showing the jury what the patient said and did, and how he appeared when in the asylum, as facts bearing on the question of his sanity: *Van Deusen* v. *Newcomer,* 40 Mich., 90. The defendant in a lunacy proceeding may personally appeal from a judgment declaring him to be a person of unsound mind: *Cuneo* v. *Bessoni,* 63 Ind., 524.

Confinement upon Charge of Insanity After Acquittal of Crime on Ground of Insanity. * * * A statute providing for the confinement in the insane hospital of the State prison of persons acquitted of murder or other felony on the ground of insanity, until discharged by the governor on receiving the certificate of the trial judge and the medical superintendent of the State insane asylum, upon an examination made by them, after being duly summoned for that purpose by the prison directors, that the prisoner is no longer insane, has been condemned, not only upon the ground that it fails to furnish adequate means for the enforcement of the remedy provided, against the restraint being continued be-

yond the necessity which alone can justify it, but also upon the ground that it plainly violates the constitutional safeguard against restraints of personal liberty without "due process of law," the proceedings contemplated by it being not only inquisitorial and *ex parte*, but incapable of being set in motion except at the will of the prison directors, who would, therefore, practically control the liberty of the person: *Underwood* v. *People*, 32 Mich., 1; 20 Am. Rep., 633.

State v. Billings (55 Minnesota, 467, 43 Am. St. Rep., 525, January, 1894).

Collins, J., said:

> *"Mr. Webster's exposition of the words 'law of the land' and 'due process of law,'* viz.: *'The general law; a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial'*—was quoted; and then the Court went on to say that, in judicial proceedings, *'due process of law' requires notice, hearing and judgment. These words,* said the Court, *do not mean anything which the Legislature may see fit to declare to be 'due process of law,' for there are certain fundamental rights which our system of jurisprudence has always recognized, which not even the Legislature can disregard, in proceedings by which a person is deprived of life, liberty or property, and one of these is 'notice before judgment in all judicial proceedings.'* * * *
>
> "But it may be stated generally that due process of law requires that a party shall be properly brought into Court and that he shall have an opportunity when there, to prove any fact, which,

according to the Constitution, and the usages of the common law, would be a protection to him or to his property (People *v.* Board of Supervisors, 70 N. Y., 228). . Due process of law requires an orderly proceeding adapted to the nature of the case in which the citizen has an opportunity to be heard, and to defend, enforce, and protect his rights. A hearing, or an opportunity to be heard, is absolutely essential. 'Due process of law' without these conditions cannot be conceived (Stuart *v.* Palmer, 74 N. Y., 183, 30 Am. Rep., 289).

"It follows that any method of procedure which a Legislature may, in the uncontrolled exercise of its power, see fit to enact, having for its purpose the deprivation of a person of his life, liberty or property, is in no sense the process of law designated and imperatively required by the Constitution. And while the State should take charge of such unfortunates as are dangerous to themselves and to others, not only for the safety of the public, but for their own amelioration, due regard must be had to the forms of law and to personal rights. *To the person charged with being insane to the degree requiring the interposition of the authorities and the restraint provided for, there must be given notice of the proceeding, and also an opportunity to be heard in the tribunal which is to pass judgment upon his right to his personal liberty in the future.* There must be a trial before judgment can be pronounced and there can be no proper trial unless there is guaranteed the right to produce witnesses and submit evidence. The question here is not whether the tribunal *may* proceed in due form of law, and

with some regard to the rights of the person before it, but, *rather is the right to have it so proceed absolutely secured?* Any statute having for its object the deprivation of the liberty of a person cannot be upheld unless this right is secured, for the object may be obtained in defiance of the Constitution and without due process of law. * * *

"That it has opened the door to wrong and injustice to the making of very serious and unwarranted charges against others by wholly irresponsible and evil-minded persons, is evident, although the method of instituting the proceedings does not affect the validity of the act. * * *

"The commission issues to the examiners, and they are authorized and directed to 'examine' the alleged lunatic. * * * *It (the examination) may be formal or informal, as they choose, and the person under examination may not have the slightest idea that he is the subject of inquiry or investigation.* The examination may be at any place where the subject can be found, or at a place convenient for the examiners. It may be public or private, and judging from the questions found in the form to be answered by the examiners, it *may consist simply in observing the alleged lunatic and in making inquiries of him or his acquaintances, or, for that matter accepting common street gossip.* To illustrate: In the certificate signed by the physicians who made this examination is the answer to a most important question, viz.: 'Has the patient shown any disposition to injure others?' The answer is 'Yes. *It is reported* that she threatens to shoot, carries firearms, and did shoot at one person passing, not knowing whom.'

"When this examination, *of which the subject need not be informed, and in which he takes no part,* is completed, the examiners are required to make a verified written report and recommendation, and on this the officer may commit without any other or further act, except that he must see the subject, either in or out of Court, informing him fully of the proceedings, and must also notify the County attorney of what is going on. *Not until after the examination, report and recommendation, upon which the officer may commit, if he so chooses, need there be any notice whatsoever to the person charged with being a proper subject for the insane asylum, nor need the County attorney be advised of the proceeding. If personal rights are of any consequence, and if they need protection at any time, such notice should precede examination, not follow it.* But aside from this serious defect in the law, it will be seen that there is *no provision which assures to the accused a trial at any time, either before or after notice, under the forms of law; no provision which guarantees to him a judicial investigation and a determination as to his sanity.* The officer before whom the inquiry is pending is nowhere required to conduct his examination with the least regard to the rights of the person charged with being insane—*his right to exercise his faculties without unwarranted restraint, and to follow any lawful avocation, for the support of life.*

"Nor is the officer obliged to hear a particle of testimony, although he is at liberty to do so. The accused or the County attorney might appear before him with an army of volunteer witnesses; but if their testimony were received or heard, or

if there was the slightest approach to a trial, it would be through the grace of the officer, not as a matter of right to the person whose personal liberty is jeopardized by the proceeding. We are not speaking of what every honorable and humane officer would do when a case was brought before him, but of what the statute would permit an officer to do.

"*Further examination of this enactment need not be made, for enough has been said to establish its invalidity and to indicate what outrages might be perpetrated under it.* The objection to such a proceeding as that authorized by this statute does not lie in the fact that the person named may be restrained of his liberty, *but in allowing it to be done without first having a judicial investigation* to ascertain whether the charges made against him are true, not in committing him to the hospital, *but in doing it without first giving him an opportunity to be heard.*

"We are compelled to the conclusion that the enactment of the sections referred to is unconstitutional, because they allow and sanction a denial of the protection of the law, and the deprivation of personal liberty without due process of law.

"As we have shown, the statute is so constructed that the opportunity to be heard in defense is not guaranteed to the person charged. It is not framed so as to compel a hearing before condemnation or a trial, under the general forms of law, before judgment is pronounced. Where it is plain that legislation upon any subject is in conflict with constitutional provisions, *the duty of the Court is obvious, and must be performed,*

whether the interest of a large number or of a certain class of people is involved, or the rights of a single citizen."

As was said in the case quoted above, People *ex rel. Elizabeth Ordway* v. *St. Saviour Asylum,* 34 App. Div., at page 371:

> *"A hearing or an opportunity to be heard,* is absolutely essential, we cannot conceive of due process of law without this."

And quoting again from Cumming & Gilbert on The Poor, Insanity, etc., Laws of New York, page 173:

> "No person can lawfully be declared insane and his personal liberty permanently restricted without formal proceedings, *and an opportunity afforded him to appear personally.* * * *"

And again, from Buswell on Insanity, Section 55:

> "The party alleged to be insane has the right to have notice *and to be present* at the proceedings for determining the issue of sanity. * * *"

So in *Hinchman* v. *Ritchie,* Brightley (Pa.), 182, the Court said:

> "In all other cases * * * he is followed and the commission executed where he is found, that this *privilege of being present* may be secured to him, and secured not merely for exhibition of him to the commission and inquest * * * but also to give him full opportunity of defeat-

ing proceedings improper, for want of foundation or legal conduct, in any of its stages."

And in the case of James, 30 How. Pr. (N. Y.), 453, it was said:

"I think no person should be adjudged to be insane or be confined as a lunatic, except perhaps temporarily, *without an opportunity of being heard* on the question of his alleged insanity before a tribunal competent to decide it."

And in another New York case, *In re* Tracey, 1, page 580, it was said:

"It is the privilege of a party against whom a commission of lunacy is issued to have notice and *to be present* at its execution."

Approved in *In re* Whitemack, 3 N. J. Eq., 252.

In *Holman* v. *Holman,* 80 Me., 139, the Court used this language:

"It is a well-settled rule of the Common Law that when an adjudication is to be made which will seriously affect the right of a person, he should be notified *and have opportunity to be heard.*"

In the case of Vananken, 10 N. J. Eq., 186, the following occurs:

"The alleged lunatic has a right *to be present at the execution of the commission,* to make his

> defense by himself or counsel and to examine witnesses."

And in the very early case of *Ex parte* Cranmer, 12 Ves. Jr., at page 455, the Chancellor said:

> "The party certainly must *be present at the execution of the commission. It is his privilege.*"

And in the Supreme Court of the United States the same question has been discussed and passed upon. In Windsor *v.* McVeigh, 93 U. S., 278, the Court said:

> "The law is and always has been that wherever notice or citation is required the party cited has the right *to appear and be heard.*"

But it is useless to multiply authorities. The proposition is well settled that a party against whom any charge or claim is made, likely to affect his liberty or his property, must have an opportunity to be heard in his own behalf.

USUALLY BY NOTICE.

Usually this opportunity to be present and to be heard is given by notice of the nature of the proceedings and the time and place of the hearing. It would be hard to conceive a better method of giving opportunity *under ordinary conditions.* Ordinary conditions imply a defendant who is free to control his person and under no restraint. Ordinary conditions imply a defendant or respondent who is untrammelled and who is permitted to follow the inclination and determinations of his own mind. But, after all, the notice is only the *machinery* used to afford opportunity. It is not the opportunity

itself; and *opportunity to be heard* is the gist and substance of the constitutional requirement.

As was said in Windsor *v.* McVeigh, 93 U. S., 277-8: "But notice is only for the purpose of affording the party an opportunity of being heard upon the claim or the charges made; it is a summons to him to appear and speak, if he has anything to say, why the judgment sought should not be rendered."

The question of immediate moment therefore in the case under consideration is, was an opportunity to appear and defend plaintiff's rights afforded to plaintiff; that is, was such opportunity afforded as is contemplated by due process of law?

PLAINTIFF WAS UNDER DURESS OF IMPRISONMENT.

It must not be forgotten that plaintiff was under duress of imprisonment. Plaintiff had been committed to said Society of the New York Hospital as insane, was imprisoned in said asylum and had been for two years. Plaintiff was held there against plaintiff's will and over plaintiff's protest at the time of said proceedings. And the fact that plaintiff was so imprisoned and so under duress *was known to the Court;* the record itself shows this (Transcript of Record, pp. 100-103).

First.—The notice of motion was directed to "John Armstrong Chanler, Bloomingdale Insane Asylum, White Plains, Westchester County, New York."

Second.—The affidavit of service of the notice of motion upon plaintiff discloses the fact that he was in "Bloomingdale Asylum, at White Plains."

Third.—The affidavit of said Dr. Lyon to said petition of plaintiff's said brothers shows that plaintiff was a "patient" in the Asylum aforesaid.

Fourth.—The appointment of the Commissioner directs them to inquire whether plaintiff "now in Bloomingdale Asylum in the State of New York, is an incompetent person."

Fifth.—The appointment also directs notice to be given to Dr. Lyon, "the person having the charge and care of him."

Sixth.—The affidavit of William White Whitaker that he served the notice of hearing shows that it was served on plaintiff "at Bloomingdale Asylum" and on said Dr. Lyon "in whose charge the said John Armstrong Chanler, an alleged incompetent person, is."

SERVICE ON A PERSON UNDER DURESS.

What effect, therefore, can any process have upon plaintiff under said circumstances—plaintiff being held in durance—to prevent plaintiff's following plaintiff's own inclinations and to restrain plaintiff from going where plaintiff might wish? The power of the State of New York had seized plaintiff and in effect had said to plaintiff:

> "You shall not leave this place of imprisonment to which I have confined you until the officials in charge of it and of you give you permission to do so."

What opportunity did plaintiff have to appear in

person and defend his liberty, and his entire estate?

This being so, and it being true that plaintiff, through physical inability as aforesaid, had no opportunity to appear and defend plaintiff's rights, what effect can be given to the notice that was served upon plaintiff? We find that a case somewhat similar to it has been passed upon by no less authority than the Supreme Court of the United States. In Windsor *v.* McVeigh, 93 U. S., the facts were these:

McVeigh was a Virginian and owned property in Alexandria County, in that State. During the Civil War he was a supporter of the Confederate Government and a soldier in its army. An act of Congress was passed providing for the confiscation of the property of such persons, and under that act proceedings were instituted in Alexandria County to enforce the confiscation of McVeigh's property.

Notice of the proceedings were given by publication, as was required by the statute, and in response to that notice McVeigh appeared by attorney and filed his answer in the suit.

The United States attorney moved the Court to dismiss the answer because McVeigh was a rebel. The Court did dismiss the answer and denied McVeigh the opportunity to defend his property rights and entered an order confiscating his property. The cause was taken to the Supreme Court of the United States and the proceedings were held void. The Court said, pages 277-8:

> "Until notice is given, the Court has no jurisdiction in any case to proceed to judgment, whatever its authority may be, by the law of its organization, over the subject-matter. But notice is only for the purpose of affording the party an opportunity of being heard upon the claim or the

charges made. It is a summons to him to appear and to speak, if he has anything to say, why judgment sought should not be rendered. *A denial to the party of the benefit of a notice would be in effect to deny that he is entitled to notice at all,* and the sham and deceptive proceedings had better be omitted altogether."

And again, at page 278:

"The law is and always has been that whenever notice or citation is required, the party cited has the *right to appear and be heard; and when the latter is denied* (*note the distinction between notice and opportunity*), *the former is ineffectual for any purpose.* The denial to a party in such a case of the right to appear is in legal effect the *recall of the citation to him.*"

The case of McVeigh *v.* United States, 11 Quall, 259, and the case of Underwood *v.* McVeigh, 23 Gratt. (Va.), 409, are to the same effect, and grew out of the same general state of facts.

In Underwood *v.* McVeigh, at page 418, the Court said: "No sentence of any Court is entitled to the least respect in any other Court or elsewhere, when it has been pronounced *ex parte and without opportunity of defense.* * * * A tribunal which decides without hearing the defendant or giving him an *opportunity to be heard* can not claim for its decrees the weight of judicial sentences."

Notice the similarity of the two cases in general characteristics. In both cases notice was given to the

defendant; in one by actual service in person, and in the other by publication. In both cases, the party was prevented from appearing by order of the Court. In the McVeigh case the order was entered after he attempted to appear. In the Chaloner case the order was entered before notice to Chaloner. In both cases it was the order of the Court which nullified the notice that was given. McVeigh could not appear because the Court *would* not let him. Chaloner could not appear because the Court *did* not let him. Chaloner could not appear because the Court had placed him in such a position—said physical disability brought on by the confinement ordered by Judge Gildersleeve, in said Judge's said order of March 10th, 1897—that it was impossible for Chaloner to appear except by order of a competent tribunal directing said commission and said jury—or a committee made up of members of said commission as well as of said jury—to visit Chaloner in his cell—in the event of Chaloner being physically incapacitated from making the journey to Court—*and said order was never entered.* The law does not countenance the doing of a vain thing. If it required notice to be given Chaloner in the said proceedings to appoint his said committee, it required it for the purpose of giving him an opportunity of being present to represent himself in said proceedings. And if said opportunity to appear which said notice was intended to give was not in fact given, but was prevented by Chaloner's said situation—said physical disability—which was itself due to said order of said Judge Gildersleeve in March, 1897 (and under a void proceeding be it remembered), then said notice is in effect withdrawn and said proceedings are wholly *ex parte* (Windsor *v.* McVeigh, *supra;* Underwood *v.* McVeigh, *supra*). The said Commissioners had the power to require the

production of Chaloner before them and said jury. Said power was especially conferred upon them by the order of their said appointment. And said power was for the purpose not only of examining Chaloner, but also for the purpose of giving him the chance to defend himself (Hinchman *v.* Ritchie, Brightley, 182): "In all other cases * * * he is followed and the commission executed where he is found, that this *privilege of being present* may be secured to him, and secured not merely for exhibition of him to the Commissioner and inquest * * * but also to give him *full opportunity* of defeating proceedings improper, for want of foundation or legal conduct in any of its stages." And the said commission should have so ordered Chaloner's presence, had it not been for the said sworn testimony of Doctors Lyon, MacDonald and Flint, aforesaid, in effect, that Chaloner would be physically injured by said production before said commission and said jury in New York, twenty miles away from Chaloner's cell, where Chaloner lay in bed with an affection of the spine which said affection had confined Chaloner to his bed for three weeks previous, at least. Upon ascertaining which said commission and said jury, should, as public spirited citizens mindful of their oaths, have at once appointed committees made up from their number, to at once visit Chaloner. And the Court should have ordered Chaloner's presence before said commission and said jury as was done in *ex parte* Cranmer, cited above—"it is his privilege"—provided only that Chaloner was physically able to attend a Court so far removed from his place of residence at said time. Failing which, said Court should have ordered that either said commission and said jury, or a committee made up from each should visit Chaloner and examine him and afford him the opportunity to *appear and be*

heard, which said void proceeding under Judge Gildersleeve in March, 1897, had—by rendering Chaloner ill—deprived him of.

If this had been done Chaloner would have been present before the tribunal that was trying him. As the said record proves Chaloner was far from averse to receiving visitors who pretended an interest in his case and in his liberation from imprisonment. As the said record proves Chaloner received politely visitors pretending said interest, and spoke with the utmost frankness before them. As said record proves Chaloner was both physically and mentally able to sustain the strain of an interview most searching and most drastic in its questionings. He might have demanded a removal to the Federal Court. He might have made what explanation and defence he desired. He might have demanded witnesses. He might have cross-examined witnesses. He might have refuted statements made by witnesses. He might have secured counsel to assist him in preventing his further imprisonment, and the turning over to a committee the control of his entire estate and of his person as well. He would have had his day in court. It would then have been due process of law and the said proceedings would have been regular. But the aforesaid salutary order was never given. The aforesaid Commission and aforesaid jury permitted plaintiff to remain in imprisonment, where they knew plaintiff to be; they permitted the person in control of plaintiff to appear before themselves and make *ex parte* allegations derogatory to plaintiff's sanity and competency; upon which said points to wit, plaintiff's sanity and competency, depended not only the control and enjoyment of plaintiff's entire estate but also plaintiff's personal liberty, and plaintiff's good name and fame in the community, in so far as such are affected

by the stigma of insanity and incompetency: while the aforesaid commission and aforesaid jury permitted plaintiff to remain helpless—owing to plaintiff's said physical disability to appear and be heard—to remain helpless under vital charges without opportunity owing to plaintiff's said physical disability to refute said vital, and as the result proved, utterly false charges. The aforesaid Commission and aforesaid jury permitted plaintiff no opportunity to refute said utterly false and utterly vital charges upon the part of plaintiff's *quasi* jailor or any other of the equally vital and equally false allegations made against plaintiff upon the part of Doctors Macdonald and Flint. The action of the aforesaid Commission as proved by Commissioner Fitch, and the action of the aforesaid jury, as proved by said jury's foreman prove said Commission and said jury indifferent not only to the rights of personal liberty and personal property upon the part of a citizen of the United States, but also indifferent to their oaths. Said action, to wit, Transcript of Record, p. 133, fol. 257: "Mr. Candler: 'That is our case.' Mr. Candler: 'There is a desire that the respondent be produced here before the jury; I think it is entirely proper and I shall take an adjournment to any day that will be agreeable to the Commissioners and the jury.' The jury states that they do not desire to have the respondent produced in court. Mr. Candler: 'I want to comply with the wishes of the Commissioners and jurors.' A juror: 'The jury does not care to have Mr. Chanler produced before them and for that reason there is no necessity for an adjournment, we can render our verdict now.' Mr. Candler: 'The order of the court reads that if the jury or any of the commissioners desire to have the respondent produced in court and have him put on the stand they may do so.' The foreman: 'It will be very hard to bring this

jury here again and it is not their desire to have an adjournment of this inquest; they think the case can be submitted upon the testimony which has been given. They do not wish to have the respondent placed upon the stand.' Transcript of Record, p. 133, fol. 257. By Mr. Fitch (re-examining said Dr. Macdonald): Q. 'Do you think, under the circumsances it would be unnecessary (to produce plaintiff in court) unless the Commissioners and jury desire to have him produced?' A. 'Yes, sir.' Com. Fitch: 'I think you have covered the ground. We wanted to have some reason why he has not appeared at this inquest.'" *Not* "We wanted to get at the truth of this matter" or "We wanted to get at the reason why" but "We wanted to have some reason why he has not appeared at this inquest." Any reason apparently would suffice Mr. Commissioner Fitch, *any reason;* even a reason as grotesquely ludicrous as totally devoid of logic, reason, common sense or any other quality save humor as the preposterous one said Commissioner builds his hopes upon, to wit: "and if you say it would be an injury to him and unduly excite him to bring him unless the commission found it necessary that is sufficient." As was said in *Windsor* v. *McVeigh*, above cited: "The subsequent sentence of confiscation of the property (opportunity to be heard having been denied) was as inoperative as though no monition or notice had been issued." And in *Underwood* v. *McVeigh*, cited above, the Court said: "The sentence of condemnation and sale was a nullity—void *in toto*. It was rendered *absolutely void* by the act of the Court in refusing to permit McVeigh to appear and be heard." Upon reading said proceedings of 1899 and signing them, the court, upon seeing, as we shall presently prove appears upon the face of said proceedings that plaintiff owning: *first* to plaintiff said physical disability—*second* to said

court's said failure to order that, provided plaintiff should be unable for any reason to appear in court, said commission and said jury, or a committee made up from members of said Commission as well as from said jury, should visit plaintiff in plaintiff's place of imprisonment and examine plaintiff personally—*third* to the fact that all the three medical experts who testified for the other side did so, to the effect, that plaintiff was physically incapacitated from appearing in Court as the following proves (Transcript of Record, p. 134, fol. 259): (Doctor Samuel B. Lyon having been previously sworn is recalled by Commissioner Fitch). "By Com. Fitch: Q. 'Do you not think it would do him (plaintiff) harm to be produced in court) physically and mentally?' A. 'Yes, sir.' Q. 'And do him an injury?' A. 'Yes, sir.'—Upon reading said proceedings and upon seeing as we shall presently prove appears upon the face of said proceedings that plaintiff owing to the said *three causes* was physically unable to appear and therefore in the eye of the law did not have an opportunity to appear in court; said court in failing to order a new trial practically and in effect *"refused to permit plaintiff to appear and be heard" by "denying plaintiff benefit of said notice."* It is a rule with all tribunals that no man can be asked to come into court at the cost of his health and mental or bodily welfare. Common humanity suggests such a ruling. Hence it has come to pass that the certificate of a physician—an affidavit by said physician—that a party could not be produced in court without physical or mental detriment exempts said party from appearing, and the trial of said party even upon so grave a charge as murder is postponed until said party is physically and mentally able to appear. *Ergo* a trial had when the defendant is not in a physical or mental condition to appear, and

therefore does not appear, is a trial where said defendant had no opportunity "to appear and be heard." Such is the exact case with plaintiff. Plaintiff is alleged upon the sworn testimony of said Doctor Samuel B. Lyon to have said at the time that plaintiff was physically unable to be present at said proceedings on account of a pain in plaintiff's spine (*ibid*, p. 115, fol. 226) plaintiff having, upon said Doctor Lyon's said testimony, kept plaintiff's bed for more than three weeks and being in bed at said time of said trial. Plaintiff swears in plaintiff's affidavit subjoined hereto that said Doctor Lyon's said statement *in re* plaintiff's said statement *in re* plaintiff's spine is correct. Plaintiff's said statement *in re* said pain in plaintiff's spine is worthy of credence for three reasons.

First. Plaintiff upon the sworn testimony of witnesses of the other side is an upright man. The said Medical Examiners in Lunacy state (lines 223-224 of said Commitment papers) "He (plaintiff) does not indulge in any bad habits." Said statement is borne out by said Doctor Lyon (proceedings 1899, p. 15) where said Doctor Lyon says: "He (plaintiff) is a very honorable man." Transcript of Record, p. 118, fol. 231.

Second. Said Doctor Lyon swears (same page *ibid*) "He (plaintiff) went out by himself an hour or so—then he ceased to go out because he was physically unable to." Said physical inability alluded to by said Doctor Lyon preceded, as appears upon said Doctor Lyon's said testimony, said pain in plaintiff's spine, which, growing worse confined plaintiff to plaintiff's bed, where plaintiff was at said time of said trial and had been for at least three weeks as aforesaid.

Third. Said Doctor Lyon swears (p. 118, fol. 231) that plaintiff told said Doctor Lyon "that he (plaintiff) could not come (to court) on account of his infirmity."

Q. "Did that infirmity really exist or was it a delusion?" A. "I think he has a pain in his spine * * * he did not feel as if he could stand up; he has kept his bed for over three weeks at least." Although all three said Doctors do their best to belittle plaintiff's said infirmity in order, on the evidence patent to a careful student of said testimony at said proceedings in order to prejudice said Commission and said jury against plaintiff, and cause said commission and said jury to conclude that plaintiff was not only a hypochondriac, but was indifferent to said Commission and said jury and said proceedings, and did not care to take the trouble to obey the summons and appear in court and defend plaintiff's good name and plaintiff's rights, although all three said Doctors do their best as aforesaid to belittle plaintiff's said infirmity, yet when there seems for a transitory moment—and in spite of the reiterated protests of said jury in strenuous opposition to said proposition—yet when there seems for one fleeting moment a possibility of the question of plaintiff's being brought to court all three said Doctors at once change their base with amazing swiftness, if not with a like ability. Said Doctor Lyon is so anxious to prevent plaintiff's appearance on the witness stand that said Doctor in said Doctor's zeal does not shrink from swearing in two opposite directions. (Transcript of Record, p. 133, fol. 257.) "Com. Ogden: 'The respondent can be produced in court without any injury or harm being done to himself—I understand the doctors have testified that he is physically able to attend court.' Mr. Chandler: 'I shall produce him here if it is the wish of the commissioners, and if we take an adjournment to some other day.' Com. Fitch: 'I will ask to have Dr. Lyon recalled' (p. 134, fol. 259). Doctor Samuel B. Lyon having been previously sworn is recalled by Doctor Fitch. By Mr. Candler: Q. 'Doctor, will you be kind enough to state

whether in your judgment, in view of the desire of John Armstrong Chanler not to come before this Commission and jury that it will do him an injury to bring him down here against his will?' A. 'I think it would be—I think he would be very much incensed and get excited; I think it would be an injury to him. When I said he was physically able to come down I mean if he wanted to come, but not forcibly—not to bring him down forcibly.' Q. 'You think it would exhaust him to bring him down here before these commissioners and jurors?' A. 'Yes, sir.' By Com. Fitch: 'You think it would be an injury to him to bring him down here? On your former testimony you said it would be no injury.' A. 'It would be no injury.' Q. 'Now you are willing to say it would do him harm and injury if he were brought down here before this commission and jury.' A. 'I don't want my testimony to be contradictory. I think his illness is hypochondriacal. He has the physical strength to come down, but I think he would be excited and disturbed by it and it would make him uncomfortable' (*sic*). Q. 'Do you not think it would do him harm physically and mentally?' A. 'Yes, sir.' Q. 'And do him an injury?' A. 'Yes, sir.' Q. 'Not permanently but temporarily?' A. 'Yes, sir. He is a man that don't bear opposition; he becomes excited—he does not brook opposition.' By a juror: 'Would you have to use force to bring him here?' A. 'It would just depend; it would depend upon how he took it; he said he did not want to come down.'" Upon examining the above peculiar sworn testimony one is struck by two things.

First. One is struck by the craft displayed by Lawyer Candler in playing upon the human nature of said jury, to wit. Said jury have iterated and reiterated their dislike to having plaintiff placed upon the stand. Said

foreman of said jury has gone so far as to announce that (Transcript of Record, p. 133, fol. 257). "It will be very hard to bring this jury here again and it is not their desire to have an adjournment of this inquest; they think the case can be submitted upon the testimony which has been given. They do not wish to have the respondent placed upon the stand." Said exceedingly frank foreman of said jury was evidently set against bringing the jury there again. An adjournment would obviously do that, therefore an adjournment of all other things was the thing at that time that said frank foreman regarded with hostile eye. Said lawyer Candler was quick to seize upon said weak spot in said foreman and promptly thrust said obnoxious proposition of an adjournment re-enforced by the pleonastic "to some other day" (*ibid* fol. 257)—prominently under the nose of said foreman. Mr. Candler: "I shall produce him (plaintiff) here if it is the wish of the commissioners *and if we take an adjournment to some other day.*"

Second. Upon examining said above peculiar sworn testimony one is struck by the following. Said Lawyer Candler says: (*ibid* fol. 258). Q. "Doctor, will you be kind enough to state whether in your judgment, *in view of the desire* of John Armstrong Chanler *not to come before this commission and jury* that it will do him an injury to bring him down here against his will?" It will be noted that said lawyer Candler does not say "in view of John Armstrong Chanler's statement that he is physically unable to be present on account of a pain in his spine" but "in view of the desire of John Armstrong Chanler not to come before this commission and jury." Doctor Lyon is not the only one of said Doctors who changed base precipitately. Said Doctor Carlos F. Macdonald said (*ibid*, fol. 241): "I examined him (plain-

tiff) again in company with Dr. Flint at Bloomingdale on April 20th, 1899, this year. This examination lasted from about six-thirty to eight o'clock P. M. On this occasion he was in bed and he was in what seemed to be his usual physical condition. He did not at first complain of any physical ailment, but in reply to questions he said that on April 14th, 1899, he was suddenly seized with a remarkable sensation in the spine just above the sacrum. * * * He was wearing a porous plaster which he said gave him instant relief when he applied it. He said his nervous system was run down under his 'incarceration.' * * * He said nothing about spinal trouble except in answer to questions. We formed the opinion he had no disease of the spine and the difficulty complained of is a delusion probably temporary. He received us on this occasion very cordially again. * * * He talked most freely and seemed to conceal nothing from us." So much for Doctor Macdonald's debonnair diagnosis of plaintiff's said painful and prolonged suffering. But said Doctor Macdonald trims about as swiftly—but less clumsily—than said Doctor Lyon when there arrives the said fleeting possibility of the question of plaintiff's being brought into court. (*Ibid*, fol. 259.) "Doctor Carlos F. Macdonald, having been previously sworn, is recalled by Doctor Fitch. By Mr. Candler: Q. 'Will you be kind enough, Doctor, to state your views in regard to the effect upon Mr. John Armstrong Chanler to bring him down here in view of the statement which he made to Doctor Lyon in reference to his preference not to come?' A. 'I think it would excite him very much; in that way it would tend to aggravate his mental condition. He is physically able to come down here, but it would unduly excite him; it would undoubtedly excite him very much and exhaust him."

Doctor Austin Flint, Senior's, opinion affords very

small hold for dissection. Said opinion is, in effect, merely an affirmation of the said opinion of said Doctor Macdonald. (pp. 125-126, fols. 244-246, *ibid.*) "Doctor Austin Flint, being called as a witness for the Petitioners, was duly sworn, and testified as follows: By Mr. Candler * * *

A. 'I examined Mr. Chanler March 16th, with Doctor Macdonald, and I have listened carefully to his testimony and that is the testimony that I should give if I were to detail to the jury the examination we made and the result arrived at—perhaps adding my recollection to his." * * * (P. 135, fol. 261, *ibid.*) "Doctor Austin Flint, having been previously sworn, is recalled. By Mr. Candler: Q. 'Doctor Flint, what have you to say on this subject, in regard to bringing Mr. Chanler here under the circumstances mentioned?' A. 'From my examination of Mr. Chanler, although I quite agree with Dr. Fitch, with the general principle that the alleged lunatic should always be produced if physically able to come, it seems to me that this case is so plain and distinct that it is practically unnecessary; and if it should be necessary to use force to bring him down here against his will I think it would be detrimental to him. Those are my views, although I quite agree with the practice that a lunatic ought to be produced in court if he can'." Said Doctor Flint after putting out a delicate feeler by way of hint to the said jury and the said Commission that said Doctor Flint's said testimony, together with said Doctors Macdonald and Lyon's said testimony had quite done for plaintiff and quite rendered inquiry into the veracity of said allegations against plaintiff upon the part of said Medical men a work of supererogation, yet and nevertheless twice remarks, as follows: "I quite agree with Doctor Fitch, with the general principle that the alleged lunatic should always be produced

if physically able to come" and again "I quite agree with the practice that a lunatic ought to be produced in court if he can." Obviously if after the above reiteration said Doctor Flint was telling the truth plaintiff was not physically able to come." The above is the formidable array of expert opinions—all and sundry of which said expert opinions, be it remembered, are from experts of the other side—the above is the formidable array of expert opinions in support of plaintiff's said assertion that plaintiff was physically unable to be present at said proceedings in 1899 on account of a pain in plaintiff's spine (p. 114, fol. 225). As we have shown, a trial had when the defendant is not in a physical or mental condition to appear, and therefore does not appear, is a trial had where the defendant had no opportunity "to appear and be heard." As the United States Supreme Court said in *Windsor* v. *McVeigh*, 93 U. S., page 278, *supra:* "The law is and always has been that whenever notice or citation is required, the party cited has the *right to appear and be heard;* and when the latter is denied (*note the distinction between notice and opportunity*) the former *is ineffectual for any purpose.* The denial to a party in such a case of the right to appear is in legal effect *the recall of the citation to him.*" Upon plaintiff's own assertion aforesaid, *supported as aforesaid by said Medical experts of the other side* plaintiff was physically unable to be present at said proceedings in 1899. *Ergo* plaintiff had—at said proceedings—no opportunity "to appear and be heard."

As the United States Supreme Court said in *Windsor* v. *McVeigh*, 93 U. S., page 277, *supra:* "Until notice is given, the court has no jurisdiction in any case to proceed to judgment, whatever its authority may be, by the law of its organization, over the subject matter. But notice is only for the purpose of affording the party an opportunity of being heard upon the claim or the charges made.

It is a summons to him to appear and to speak, if he has anything to say, why judgment sought should not be rendered. *A denial to a party of the benefit of a notice would be in effect to deny that he is entitled to notice at all*, and the sham and deceptive proceedings had better be omitted altogether." As in the case of *Underwood* v. *McVeigh*, 23 Gratt (Va.) 418 (*supra*), growing out of the same general state of facts the court said: "No sentence of any court is entitled to the least respect in any other Court, or elsewhere, when it has been pronounced *ex parte* and without opportunity of defense * * * a tribunal which decides without hearing the defendant or giving him an opportunity to be heard cannot claim for its decrees the weight of judicial sentences."

The said Commitment Papers (Transcript of Record, p. 113, fols. 222-223) show that plaintiff, John Armstrong Chanler, a citizen of Virginia, was committed to Bloomingdale Insane Asylum at White Plains, New York, by an order entered March 10th, 1897, by Judge H. A. Gildersleeve of the Supreme Court of that State, upon the Petition of Winthrop A. Chanler, and Lewis S. Chanler, brothers of plaintiff, and Arthur A. Carey, a cousin of plaintiff, and upon the certificate of M. Allen Starr and another, Statutory Medical-Examiners-in-Lunacy; and that personal service of process upon plaintiff was dispensed with by said Judge on the alleged ground that plaintiff was dangerous. The said proceedings under which plaintiff was so committed were had without any notice to plaintiff whatsoever, such notice having been specifically dispensed with by order of said Judge (See said Commitment Papers, fol. 223, lines 185-192). Said commitment was not temporary, but indeterminate and permanent as to time and was stated to be after "a hearing duly had" (See Commitment Papers, line 345). Said order was that plaintiff be "adjudged insane and that he be committed to Bloomingdale Insane

Asylum at White Plains, N. Y., an institution for the custody and treatment of the insane." (See Commitment Papers, line 349-351.)

Said Commitment Being, On Its Face, a Permanent Order And Without Notice, Is, For Want of Due Process of Law, Void.

In *Windsor* v. *McVeigh*, 93 U. S. *supra*, the Supreme Court of the United States said: "Until notice is given, the court has no jurisdiction *in any case* to proceed to judgment, whatever its authority may be, by the law of its organization, over the subject matter."

(1) *As the above argument proves, lack of notice is lack of due process of law. As has been shown above there was lack of notice to plaintiff in said proceedings in* 1897, *by which* plaintiff was declared a homicidal maniac upon an order entered by said Judge H. A. Gildersleeve: upon the Petition of plaintiff's said brothers and cousin, Messrs. Winthrop Astor Chanler, Lewis Stuyvesant Chanler and Arthur Astor Carey; and upon the certificate of lunacy signed by said Medical-Examiners-in-Lunacy said Doctor Moses A. Starr and another; upon the strength of all of which illegal performances plaintiff was summarily arrested and incarcerated for three years and eight months in the Society of the New York Hospital, White Plains, New York, until plaintiff was fortunate enough to make good plaintiff's escape therefrom Thanksgiving Eve, 1900. *Lack of due process of law renders any proceedings void ergo* said proceedings in 1897 were void.

(2) *As the above argument proves lack of opportunity to appear and be heard is lack of due process of law. As has been shown above there was lack of opportunity to appear and be heard—upon plaintiff's part*

through illness—in said proceedings in 1899 *before said Commission and said Sheriff's jury* instituted by plaintiff's said brothers, Messrs. Winthrop Astor Chanler and Lewis Stuyvesant Chanler with a view to having plaintiff declared an incompetent person, in which said proceedings said Medical-Examiners-in-Lunacy, said Doctors Carlos F. Macdonald and Austin Flint, Senior, testified in effect that plaintiff was a hopeless lunatic and a hopeless incompetent, and also joined said Dr. Samuel B. Lyon in testifying in effect that plaintiff was physically incapacitated by a pain in plaintiff's spine from appearing at said proceedings.

Furthermore. As has been shown above said court practically and in effect *"refused to permit plaintiff to appear and be heard"* by *"denying plaintiff the benefit of said notice"* for the *three* aforesaid reasons: *first,* plaintiff's said physical disability—*second,* said court's said failure to order that, provided plaintiff should be unable for any reason to appear in court, said commission and said jury or a Committee made up from members of said Commission, as well as from said jury, should visit plaintiff in plaintiff's place of imprisonment and examine plaintiff personally—*third,* all the three medical experts who testified for the other side did so, to the effect, that plaintiff was physically incapacitated from appearing in court as the following proves (Transcript of Record, p. 134, fol. 258). "(Doctor Samuel B. Lyon having been previously sworn is recalled by Dr. Fitch). By Com. Fitch: Q. 'Do you not think it would do him (plaintiff) harm (to be produced in court) physically and mentally?' A. 'Yes, sir.' Q. 'And do him an injury?' A. 'Yes, sir'." Upon reading said proceedings and upon seeing, as we have proved above, it appears upon the face of said proceedings that plaintiff, owing to the said *three causes* was physically unable to appear,

and therefore in the eye of the law did not have an opportunity to appear in court; said Court in failing to order a new trial practically, and in effect *"refused to permit plaintiff to appear and be heard"* by *"denying plaintiff* the benefit of said notice." As was said in *Underwood* v. *McVeigh*, cited above, the court said: "The sentence of condemnation and sale was a nullity—void *in toto*. It was rendered *absolutely void* by the act of the Court in refusing to permit McVeigh to appear and be heard." And in *Windsor* v. *McVeigh*, above cited, "The subsequent sentence of confiscation of the property (opportunity to be heard having been denied) was as inoperative as though no monition or notice had been issued." As the above argument proves said sentence declaring plaintiff an incompetent person was a nullity—void *in toto*. It was rendered *absolutely void* by the act of the Court in refusing to permit plaintiff to appear and be heard. The subsequent sentence practically confiscating plaintiff's property by turning said property over to said falsely alleged committee of plaintiff's person and estate (opportunity to be heard having been denied) was as inoperative as though no monition or notice had been issued. *Ergo said finding of said Commission and said Sheriff's jury in* 1899 *was a nullity—void* in toto; *and said subsequent sentence of said Court declaring plaintiff an incompetent person and turning plaintiff's person and property over to a falsely alleged committee of plaintiff's person and estate (opportunity to be heard having been denied) was as inoperative as though no monition or notice had been issued.*

As the above argument proves lack of opportunity to appear and be heard is lack of due process of law. As has been shown above there was lack of opportunity to appear and be heard—upon plaintiff's part through ill-

ness—in said proceedings in 1899, *before said Commission and said Sheriff's jury. Lack of due process of law renders any proceedings void, ergo said proceedings in* 1899 *were void.*

Said proceedings being void the possession of plaintiff's property by said falsely alleged Committee is without warrant or authority and plaintiff may pursue said falsely alleged Committee in the Courts as a trespasser upon plaintiff's property.

Plaintiff being a citizen of Virginia, and the falsely alleged Committee of plaintiff's person and estate, said T. T. Sherman, being a citizen of New York, and the amount in controversy being over three thousand dollars, the Federal Court has jurisdiction.

POINT 12. The said Proceedings in 1899 were void for lack of due process of law for the following reason, to-wit. Said trial was had *in absentia*. The Court failed to direct the appearance, before said Commission and said Sheriff's jury, of plaintiff; and the Court also failed to direct that, failing this, said Commission and jury, or committees made up therefrom, should visit plaintiff in his cell in the Society of the New York Hospital, at White Plains.

Ex parte Cranmer (1806) (*supra*). Lord Chancellor Erskine said: "The party certainly must be present at the execution of the commission (*de lunatico inquirendo*). It is his privilege."

Bethea against McLennon, North Carolina Reports (1840) (*supra*). The court said: "It is true that the lunatic is entitled to be present before the jury; and if they deny him this right, such denial would be sufficient cause for setting aside the inquisition."

Stafford v. *Stafford* (*supra*). The Court said: "We think it indispensable he (the alleged lunatic) should have the opportunity afforded him to hear and confront those who, by their evidence, are about to deprive him of all control over his actions and take from him the enjoyment of his property. The defendant had a right to demand in the Appellate Court, legal proof of her insanity, and that legal proof was not furnished by testimony taken out of her presence."

Dowell against Jacks, North Carolina Reports (1859) (*supra*). The Court said: "She had no notice—was not legally represented, and what is of still greater importance, was not present, to be seen and examined by the jury."

Stewart v. *Kirkbride* (1867) (*supra*). The Court said: "Lord Chancellor Erskine (*ex parte* Cranmer, 12 Ves. Jr. 455) said: 'The party must certainly be present at the execution of the commission; it is his privilege'." The same rule has been adopted in the United States. (See Russell's case, 1 Barb. Ch. Rep. 38; and Hinchman's case, Brightley's Rep. 181.)

State v. *Billings* (1894) (*supra*). The Court said: "But it may be stated generally that due process of law requires that a party shall be properly brought into court, and that he shall have an opportunity, when there, to prove any fact which, according to the Constitution, and the usages of the common law, would be a protection to him or to his property: *People* v. *Board of Supervisors,* 70 N. Y. 228."

POINT 13. The said proceedings in 1899 were void for lack of due process of law, for the following rea-

sons, to-wit: (1) Although notice of the said proceedings could have been given days earlier, the order was barely complied with in giving the required five days, and the hearing placed at the unheard of hour of four o'clock in the afternoon in New York City, more than twenty miles away from White Plains, where plaintiff was confined. This would naturally hurry the trial. (2) The constitutional guarantee of due process of law applies to the proceedings at the trial. It compels an orderly, fair, reasonable presentation of the facts, and a legal conclusion therefrom. At the said jury trial in this case there was a most colossal disregard of the rights of liberty and property. When the evidence was in—and there seemed some chance of the appearance of the plaintiff—the foreman of the said Sheriff's jury stated to the said Commission: "It will be very hard to bring this jury here again and it is not their desire to have an adjournment of this inquest. They think the case can be submitted upon the testimony which has been given. They do not wish to have the respondent placed upon the stand." And this from the foreman of a Sheriff's jury where the liberty and property of a citizen were at stake, and where said jury had not been employed for weeks or even days upon said case, but had met for the first time in their lives on said case, at four o'clock that afternoon.

1. In approaching said point one is struck by two things. *First.* One is struck by the statement that "Although notice of the said Proceedings could have been given days earlier, the order was barely complied with in giving the required five days, and the hearing placed at the unheard of hour of four o'clock in the afternoon in New York City, more than twenty miles away from White Plains, where plaintiff was confined. This would naturally hurry the trial."

Second. One is struck by the statement that "When the evidence was in—and there seemed some chance of the appearance of the plaintiff—the foreman of the said sheriff's jury stated to the said commission 'It will be very hard to bring this jury here again and it is not their desire to have an adjournment of this inquest.' They think the case can be submitted upon the testimony which has been given. *'They do not wish to have the respondent placed upon the stand'."* Although said notice of said Proceedings could have been given days earlier the said order was barely complied with in giving the required five days. A moment's thought will arouse the suspicion that said undue haste was the result of some, at present, hidden motive. A moment's further thought will confirm said suspicion particularly when one connects said suspicion with said extraordinary hour for beginning a judicial proceedings of the weight and importance of said hearing upon which depended not only the entire control of plaintiff's large estate, but also plaintiff's liberty. Said suspicions will be still further confirmed by connecting therewith the monstrous remark of said foreman, to-wit, "They (the said sheriff's jury) do not wish to have the respondent placed upon the stand." *"A refusal to adjourn an inquisition for a reasonable time to enable the party charged to make necessary preparation for trial, when he has been prevented from making that preparation by the day named in the notice, is good ground for setting aside the inquisition." In re Jewett,* 23 N. J. Eq. 288. Note in 43 Am. St. Rep. 531.

POINT 14. The said proceedings in 1897 and the said proceedings in 1899 were void *in toto* from lack of proper evidence. Unless there is clear proof of insanity a judgment against the party founded thereon runs foul of the

constitutional provision. On the maxim that "only the best evidence procurable is admissible" no evidence, short of the alleged lunatic's personal appearance in Court or before a committee of the jury, can be the best evidence procurable of said alleged lunatic's mental and physical condition. Anything short of said personal appearance is purely *ex parte* and therefore void. The sum total of the evidence against plaintiff in the proceedings in 1897 was made up of either purely perjured testimony upon the part of the said petitioners, or purely bought and paid for testimony upon the part of the said medical examiners in lunacy hired by the said petitioners. The sum total of the evidence against plaintiff in the proceedings in 1899 was made up of the aforesaid evidence, perjured testimony, upon the part of the said medical examiners in lunacy who, as in the first instance were in the pay of the other side. The bulk of the evidence in both said proceedings had to do with the purely frivolous charge that plaintiff entered upon occasional trances, and trance-like states. Not one word was uttered at either of the said proceedings against plaintiff's business capacity, or business judgment, or business foresight, or business prudence. And this fatal omission was in the teeth of the fact that plaintiff was, at the time the said proceedings in 1897 were instituted, actively engaged in large business operations, in which plaintiff had been engaged for four years past, and was holding the position as a member of the Board of Directors in two large corporations at the time of plaintiff's said arrest and imprisonment upon a false charge of lunacy (Folios 69-70, 87-89). Not a single one of plaintiff's associates upon said Boards was called as a witness against plaintiff's sanity. In short, the whole evidence in plaintiff's case goes to prove plaintiff's permanent and unbroken sanity and competency through

life. (See Plaintiff's Exhibit 3, and Plaintiff's Exhibit 7 for identification.)

In closing said subject it might be well to draw attention to the ignorance, the professional ignorance, displayed by said Doctors Carlos F. Macdonald and Austin Flint, Senior. In the opinion concerning the psychological experiments of plaintiff-in-error, by Professor William James, M. D., Professor of Psychology at Harvard University, the following occurs, to-wit: "The Napoleon experiment falls strictly within the limits of praiseworthy research. Psychology would be more advanced were there more subjects of automatism ready to explore carefully their eccentric faculty. Although the medical profession is beginning to acquaint itself with these phenomena, it is still lamentably ignorant. Specialists in insanity in particular are ignorant, for in spiritualistic circles those automatisms are regarded as valuable gifts, to be encouraged rather than checked, and asylum Doctors hardly ever see them. When they do see them they may interpret them as delusional insanity, with which they *are* familiar, and a merely mediumistic subject may thus have grievous injustice done him. In delusional insanity there is also automatism, so 'Paranoia' so-called and mediumship have elements in common. But for 'Paranoia' to be diagnosed there must be no distinct alternation between the primary and the 'X' consciousness, and there must be marked abnormal peculiarities in the case as well as intellectual delusion. In Mr. Chanler's case there appears to have been complete alternation, and there is no sign whatever of delusion." In said opinion of the late Doctor Thomson Jay Hudson the following occurs, to wit: "The salient feature of the situation consists in the fact that he (plaintiff) has made an original and independent discovery of a most important Psychological fact. In fact it may be said to be *the* fun-

damental fact of Psychological science, since all other facts of Psychology sustain a necessary relationship to it; and many of them are inexplicable in the absence of a knowledge of the fundamental fact or principle, that Mr. Chanler discovered. It is that man is endowed with a mental faculty—or a congeries of mental faculties and powers—that lie below the threshold of normal consciousness. I do not say that Mr. Chanler was the first discoverer of this fact; for I do not know the date of his discovery. But I have every reason to believe that he was an original and independent discoverer. It is true that many eminent scientists have, within the last decade, arrived at the same conclusion, each by his own methods of investigation and experimentation. Most of them have made their experiments on others; but one of the remarkable features of Mr. Chanler's methods of research is that his conclusions were based wholly upon experiments made upon himself, together with an intelligent observation of the workings of his own inner consciousness. The advantages of that method are obvious to any Psychologist." In said opinion of Dr. John Madison Taylor, the following occurs, to wit: "At all times Mr. John Armstrong Chanler consistently holds to the view that this cerebration is the product of clear ratiocination, based upon well-authenticated and accepted facts, Physiologic, Psychologic, and Metaphysic. That the attitude of the mind, which he names the unknown or X-Faculty, is the product of mental evolution, and in varying degrees, is common to all sentient human beings, and in no manner or degree the product or reflection of any cause or influence outside the human organism. *His chief contention as to having made a discovery is that he makes practical use of this function of the subconsciousness, and through Graphic Automatism causes it to perform literary work.* * * * He sees

no reason why others should not develop the same faculty."

An examination of the statements and remarks, in said proceedings, upon the part of said Doctors Macdonald and Flint reinforce the truth of said Professor James's said remark, "Although the medical profession is beginning to acquaint itself with these phenomena, it is still lamentably ignorant. Specialists in insanity in particular are ignorant." Said Doctor Flint says in said Doctor's statement (p. 86, fol. 166): "He (plaintiff) went into a trance at the request of Doctor Macdonald and gave the most vivid illustrations of the death of Napoleon. He had told deponent and the said Macdonald that he was Napoleon only when in a trance." Said Doctor Macdonald says in said Doctor's statement "He (plaintiff) went into a trance at the request of deponent and gave the most vivid illustration of the death of Napoleon. He had told deponent that he was Napoleon only when in a trance." Granting said statements touching, "He had told deponent and the said Macdonald that he was Napoleon only when in a trance" (p. 86, fol. 166) and "He had told deponent that he was Napoleon only when in a trance," granting said statements to be true—which, as has been said aforesaid said statements are not—for in plaintiff's said affidavit plaintiff swears: "I wished to have a little fun with Mr. Macdonald and Mr. Flint, so I set a little trap for them, into which both fell head first. It was as follows. I said: 'I boldly say that I am the reincarnation of Napoleon Bonaparte.' It was as good as a play to one interested in watching the facial play of human emotions, it was as good as a play to watch the Doctors. Mr. Macdonald's feline features and cold blue eye lit up with expectant triumph. In Mr. Austin Flint, Senior, expectancy of triumph took on a heavier, but no less

pronounced, form. Mr. Flint's heavy features took on an unwonted animation and his somnolent eye lit up with the flame of anticipation. So soon as I had checked off the above facial expressions carefully, so as to be able to describe them truthfully in my brief, when occasion served, I instantly threw their hopes to the ground: I instantly added to my above remark, *'But I only say so when in a trance.'* The effect was instantaeous. Mr. Macdonald collapsed, and fairly wriggled with chagrin, as he blurted out the damaging 'You can't catch him.' The effect on Mr. Flint was shown by his sagging back into his seat with a grunt of disgust. They evidently, from their disappointment, showed that they fully realised the innocuousness of my apparently bold declaration qualified. They evidently knew that no man is mentally, morally, or legally responsible for what he says in his sleep. Therefore, they deliberately, craftily, transpose the position of the qualifying word 'only' and instead of putting it where it belonged in my sentence, move it to a point where it takes on an entirely different meaning"—granting said statements touching "He had told deponent and the said Macdonald that he was Napoleon only when in a trance" and "He had told deponent that he was Napoleon only when in a trance. Granting said statements to be true which, as indicated above said statements are not,—plaintiff never saying that plaintiff was Napoleon Bonaparte except when plaintiff entered a trance, whereupon not plaintiff but plaintiff's said "X" consciousness, operating plaintiff's vocal organs, pretended to be Napoleon Bonaparte, a preposterous proposition stoutly denied by plaintiff upon issuing from said trance—said statements fit exactly the case mentioned aforesaid by said Professor touching the alternation of consciousness. "For 'Paranoia'" to be diagnosed there must be no distinct alternation be-

tween the primary and the "X" consciousness." * * * "In Mr. Chanler's case there appears to have been complete alternation." By "primary consciousness" Professor James means our ordinary waking consciousness. By "X" consciousness Professor James means the consciousness in operation during trance states and trance-like states. Even said Doctors Macdonald and Flint admit that plaintiff claimed a complete alternation "alternation of consciousness" by asserting that plaintiff had said that plaintiff "was Napoleon only when in a trance:" that is to say that plaintiff's trance-consciousness—plaintiff's "X" consciousness—as Professor James terms it—completely alternated or completely changed from plaintiff's "primary consciousness," when plaintiff entered said trance. That is to say. That plaintiff's "primary consciousness" was in control of plaintiff's actions and utterances when not in a trance, and that when plaintiff entered a trance plaintiff's primary, or ordinary waking, consciousness gave place to—alternated with—plaintiff's "X" consciousness, which operated said trance, and as "X" consciousness invariably pretend to represent some person other than the person represented by said primary consciousness plaintiff's said "X" consciousness followed said invariable Psychological rule, and pretended to represent some person other than plaintiff—arbitrarily choosing to claim to represent Napoleon Bonaparte. Now regarding the ignorance of the medical profession concerning trances and trance-like states mentioned aforesaid by said Professor James. Said Professor says: "Although the medical profession is beginning to acquaint itself with these phenomena it is still lamentably ignorant. Specialists in insanity, in particular, are ignorant." Said specialists in Insanity, Doctors Macdonald and Flint proved themselves no whit less ignorant than the general run

of specialists in Insanity in said regard for instance. Said Doctor Flint says as though he were pronouncing a final and incontrovertible doom (*ibid.*, p. 126, fol. 245), "And he (plaintiff) had the delusion of the change of personality which is observed in many cases of 'paranoia.'" Likewise said Doctor Macdonald (*ibid.*, p. 123, fol. 240): "The form of his (plaintiff's) insanity, from which he is suffering, is 'paranoia' or chronic delusional insanity, the English term of it. It is an incurable form of mental disease * * * it is also characterized in the mania known in the later stage by the change in the personality of the individual. * * * I should say that Mr. Chanler is the most typical classical case of 'paranoia' I have ever seen. I have seen thousands of them. It presents all the essential and diagnostic signs of that disease * * * and change of personality." And (*ibid.*, p. 124, fol. 242): Q. "In your opinion, Doctor, is he now of unsound mind?" A. "Yes, sir." Q. "Is he capable of attending to his person or estate—his affairs?" A. "Absolutely not." By Commissioner Ogden (*ibid.*, fol. 243): Q. "This opinion is formed on your observation?" A. "Yes, sir." Q. "And is it independent of what was told you?" A. "Yes, sir. It is confirmed, of course, there is no shadow of doubt in my mind, and I think in the experience—any experienced examiner in lunacy would reach that conclusion without any history of the case whatever. * * * It presents all the ear-marks of typical paranoia. In the physical and mental condition there is no symptom lacking to make it a perfectly typical case of paranoia. If one wanted a case for teaching or describing a case in a textbook you could not describe it more graphically than simply taking his case as it presents itself. *It is the most striking case of paranoia that I ever have seen in my life.*" From the above there was evidently little

doubt in said Doctor Carlos F. Macdonald's mind but that plaintiff was afflicted with a case of "paranoia." Now let us hear what said Doctor Austin Flint, Senior, has to say upon said interesting topic of "paranoia" (*ibid.*, fol. 245): Q. "And from what form of insanity is he now suffering? A. "He has a typical case of what is known as paranoia or chronic delusional insanity." Q. "In your opinion, Doctor, is that progressive and incurable?" A. "It is incurable and progressive and will finally terminate in dementia. If I may be allowed to say those cases frequently live for a very much longer time, quite different from paresis." Q. "In your judgment, is Mr. Chanler now capable of taking care of his estate and person? A. "No, sir, he is not." By Commissioner Ogden (*ibid.*, fol. 245): "That is the usual thing, Doctor, that a patient suffering from paranoia —it is first by degrees gets a slight form and then a mature delusion?" A. "That is the usual thing. * * * He has some fixed delusion like this delusion that he is Napoleon Bonaparte." Q. "Is his physical condition all outlined with that form?" A. "Nothing could be more typical of that form of disease; it is an absolutely typical case from every point of view." From the above there was evidently little doubt in said Doctor Austin Flint, Senior's, mind but that plaintiff was afflicted with a case of paranoia notwithstanding said Professor James's remarks aforesaid. "But for 'Paranoia' to be diagnosed there must be no distinct alternation between the primary and 'X' consciousness;" and notwithstanding, as has been shown above even said Doctors Macdonald and Flint admit said "alternation between the primary and 'X' consciousness" by asserting that plaintiff had said that plaintiff "was Napoleon only when in a trance." So much for the professional ignorance displayed by said Doctors Carlos

F. Macdonald and Austin Flint, Senior. But said admission by said Doctors that plaintiff had said that plaintiff "was Napoleon only when in a trance" does more than advertise said professional ignorance of said Doctors. Said admission places said Doctors in a rather unpleasant position as regards perjury. For said Doctors both define paranoia as "chronic delusional insanity." Said Doctor Macdonald (*ibid.*, fol. 240) "paranoia or chronic delusional insanity;" said Doctor Flint (*ibid.*, fol. 245) "paranoia or chronic delusional insanity." *How could plaintiff's falsely, grotesquely, ignorantly, alleged "delusion" regarding Napoleon Bonaparte be said to be "chronic," which means all the time, when said Doctors Macdonald and Flint both admit that plaintiff said that plaintiff "was Napoleon only when in a trance," and therefore not out of a trance; and, as plaintiff on the evidence, only entered a trance once during his whole imprisonment, once during three years and eight months, therefore not all the time and therefore not chronic. While the truth as shown above is that plaintiff stoutly denied that plaintiff was Napoleon Bonaparte either in or out of a trance.*

In this connection it is apposite to draw attention to two points in connection with said trances and trance-like states in which plaintiff from time to time entered purely for scientific research. As has been shown by said statement of said Doctor Horatio Curtis Wood (*supra*) and by the said opinion of said Professor James plaintiff is far from being a believer in spiritualism. As has been shown by plaintiff's said letter to said Woods, under date July 3rd, 1897, plaintiff is far from being either a Buddhist or a Hindu. Said documents prove plaintiff to be a scientific student who places what spiritualists claim to be the work of spirits, while the medium

is entranced, to the account of what plaintiff terms "The X-Faculty" as aforesaid. Plaintiff although a medium—upon no less an authority than said Professor James—is a believer in spiritualism. Plaintiff, while considering spiritualism a crude, ignorant and benighted form of belief even when spiritualism is regarded by its followers as a religion, plaintiff yet knows that spiritualism is a lawful calling when followed professionally as a medium, and also that spiritualism, when followed as a religion, is as safe from attack as any other religion. In a rather recent case on the Pacific coast where spiritualism, as a religion, was attacked upon the score of absurdity the Court wisely and justly held that common sense was not applicable to religious practices. That if a person considered that said person was communicating with the Deity by merely writing said person's desires upon paper and then destroying said paper that said performance, being to said person said person's religion, was therefore to said person sacred and secure from attack upon any ground of lack of common sense. Said opinion is maintained by Mr. Justice Ingraham of the Appellate Division of the New York Supreme Court in the matter of Beach, 23 App. Div. 411 (First Department, 1897). The learned Justice said: *"It is true that a belief in spiritualism may be consistent with good business instincts and sound judgment; and the mere fact that a person is a believer in spiritualism would not itself justify an inference that such person was incompetent to manage himself or his affairs."*

Lastly, in this particular the most fruitful field of research in Experimental Psychology is that of mediumship. Modern Psychologists who pursue Experimental Psychology find in mediums a field for investigating the, at present, practically unknown cause or causes of the trance and trance-like operations of the human mind,

find a field which nothing else supplies. Said mediums are what spiritualism has thus given to Science. To return to the said allegations—false allegations—of said Doctors Macdonald and Flint that plaintiff had said that plaintiff "was Napoleon only when in a trance." Granting merely for the sake of argument that said false allegations were true what do said false allegations amount to in the light of Mr. Justice Ingraham's said opinion that "It is true that a belief in spiritualism may be consistent with good business instincts and sound judgment; and the mere fact that the person is a believer in spiritualism would not of itself justify an inference that such person was incompetent to manage himself or his affairs." Supposing said false allegations true plaintiff would have been proved thereby to be a believer in spiritualism. Taking now the other horn of the dilemma which impales said Doctors Macdonald and Flint. Suppose—but only for the sake of argument—that plaintiff had said that plaintiff "was Napoleon Bonaparte only when in a trance" and also suppose that plaintiff did not choose to protect himself in said assertion by spiritualism. Would plaintiff thereby be proved to be of unsound mind? Far from it. For plaintiff could fall back upon one or both of two sufficiently strong supports, to-wit: Philosophy and Religion. Plaintiff could fall back upon Philosophy and upon the ancient Greek doctrine of Metempsychosis, or plaintiff could fall back upon the religion of Brahma, which teaches the reincarnation of the dead in the living. *Upon the above line of argument therefore plaintiff is not insane or incompetent upon the main count—in fact, the only count worthy the name—in the indictment against plaintiff's reason in said proceedings in* 1897, *and said proceedings in* 1899: the former of which are practically wholly upon trance or trance-like utterances, while the latter

are based practically wholly upon said Napoleonic trance; in neither of said proceedings is there one word said against plaintiff's "good business instincts and sound judgment" to cite once more the language of Mr. Justice Ingraham. As was said above the said proceedings in 1897 and the said proceedings in 1899 were void *in toto* from lack of proper evidence. Unless there is clear proof of insanity a judgment against the party founded thereon runs foul of the constitutional provision. On the maxim that "Only the best evidence procurable is admissible," no evidence short of the alleged lunatic's or incompetent's personal appearance in Court, or before a Committee of the Commission as well as of the jury can be *the best evidence procurable* of said alleged lunatic's or said alleged incompetent's mental and physical condition. Anything short of said personal appearance is purely *ex parte* and therefore void. In as old a case as that *of ex parte* Smith, 1 Swanstrom, 4, in 1818, Chancellor *Lord Eldon observed, "It is a practice by no means uncommon in cases of lunacy * * * that when the lunatic cannot be removed to the jury and it is inconvenient for the jury to go to the lunatic, one or two of the jury examine the lunatic and report their observations to the rest."* In Lord Ely's case (*supra*) "try by a jury and personal examination." The reasons adducible to support said salutary practice of allowing a citizen to lay eyes upon the jury who is about to deprive said citizen of both liberty and property are too obvious to require pointing out. But in said connection a point comes which is not so obvious—to-wit: Under ordinary circumstances an affidavit of service of notice is the best proof as to service of said notice. But when said party to be served with notice is in duress of imprisonment and therefore is illegally confined against said party's will said affidavit of service loses said affi-

davit's force for the following reason, to-wit. *Where a party to be so served is at liberty the temptation to perjury upon the part of the process-server is rendered negligible.* Not so, however, when said party is in duress of imprisonment surrounded by persons—said party's physicians and keepers—whose business interests are involved in retaining said party as a prisoner and "pay patient." In said instance the door of temptation to fraud and perjury upon said part of said process-server at the paid instigation of said physicians and keepers, whose business interests are as aforesaid, involved as well as whose personal interests are endangered, that is to say said physicians reputations would be endangered should said party be fortunate enough some day to secure said party's day in court. In said instance the *real evidence* and therefore the *best evidence* as to whether said service of notice took place or whether, instead of taking place said service of notice was fraudulently sworn to as having taken place, in said instance the best evidence aforesaid is the appearance of said party to be served—said defendant—in court, or if this is not possible said defendant's word of mouth on said subject before said Commission and said jury, or before said Committee—made up from said Commission and said jury—upon visiting defendant at said defendant's place of imprisonment. Unless said Court orders said defendant's production in court or failing that, that said Committee—made up from said Commission and said jury—visit said defendant as aforesaid—unless said action upon said Court's part takes place said Court itself, as shown above, opens wide the door to perjury. As we said above on the maxim that "only the best evidence procurable is admissible" no evidence short of the alleged lunatic's or alleged incompetent's personal appearance in Court or before a Committee of the Commission as well as of the

jury can be the *best evidence procurable* of said alleged lunatic's, or said alleged incompetent's mental and physical condition. It seems palpable enough that the best evidence as to said alleged lunatic's or said alleged incompetent's mental sanity and mental competency should be the mental evidence thereof in each said instance. It also seems palpable enough that said mental evidence of said alleged lunatic's and said alleged incompetent's mental sanity and mental competency is the only real evidence procurable in said premises. All other evidence being secondary and in the nature of hearsay. For instance: Suppose the question were in a suit concerning damages recoverable through carelessness proved by the breaking, on a train in transit, of a bolt. Undoubtedly the production in court of said bolt through whose alleged fracture said accident is alleged to have occurred is the only *real evidence* and therefore the *best evidence* as to said alleged fracture. In the same way said "best evidence" rule is in operation where a written instrument is at issue. In said case said instrument itself is better evidence of the contents of said instrument than statements concerning said contents made by persons under oath, and the latter would be inadmissible until either said instrument is produced or said instrument's absence accounted for. To conclude said point we append the following:

State v. *Goodwill*, 25 Am. St. Rep. 876 (W. Virginia, Nov., 1889).

THE LIBERTY OF EACH PERSON AND HIS RIGHT TO ACQUIRE AND RETAIN PROPERTY must always be considered in connection with the rights, liberties and welfare of others, and each person must submit to such reasonable restrictions as must necessarily be imposed for the better protection of the whole community, and even for the protec-

tion of a particular class, and it will hence always be difficult, if not impossible, to define or prescribe any precise test from which to determine with unvarying certainty what restrictions upon the liberty of individuals, or of classes of individuals, are sustainable and what are not. While the courts properly hestitate to formulate definitions of liberty and of due process of law, or to give enumerations of all that may be conceded to one person or denied to another without denying to "any person the equal protection of the laws," yet they have, in some instances, given general descriptions or definitions which, while not intended to be applicable under all circumstances, are usually applicable, and therefore worthy of restatement here. Thus it was said in *People* v. *Gillson*, 109 N. Y. 389, 4 Am. St. Rep. 465: "The following propositions are firmly established and recognized: A person living under our Constitution has the right to adopt and follow such lawful industrial pursuit, not injurious to the community, as he may see fit. The term 'liberty,' as used in the Constitution, is not dwarfed into mere freedom from physical restraint of the person of the citizen, as by incarceration, but is deemed to embrace the right of man to be free in the enjoyment of the faculties with which he has been endowed by his Creator, subject only to such restraints as are necessary for the common welfare. Liberty, in its broad sense, as understood in this country, means the right not only of freedom from servitude, imprisonment, or restraint, but the right of one to use his faculties in all lawful ways, to live and work where he will, to earn his livelihood in any lawful calling, and to pursue any lawful trade or avocation." "The common business and callings of life, the ordinary trades and pursuits, which are innocuous in themselves, and have been followed in all countries from time immemorial, must therefore be free in this

country, to all alike, upon the same conditions. The right to pursue them without let or hindrance, except that which is implied to all persons of the same sex, age, and condition, is a distinguishing privilege of the citizens of the United States, and an essential element of that freedom which they claim as their birthright. * * * Civil liberty exists only where every individual has the power to pursue his own happiness according to his own views, unrestrained, except by equal, just and impartial laws." *Butchers' Union Co.* v. *Crescent City Co.*, 111 U. S. 757.

Real Evidence.

Real evidence is such evidence of the thing or object as is addressed directly to the senses of the court or jury without the intervention of the testimony of witnesses, as where various things are exhibited in open court.

When, for instance, the condition or appearance of any thing or object is material to the issue, and the thing or object itself is produced in court for the inspection of the tribunal, with the proper testimony as to its identity, and if necessary to show that it has existed in this State since the time at which the issue in question arose, this object or thing becomes itself "real evidence" of its condition or appearance at the time in question.

Gaunt v. *State*, 50 N. J. L. 491, where resemblance of a child to alleged father was material to the issue, and the child was in court, *Held*, not error for the court to refuse to charge the jury that they must not consider the question of resemblance at all, and that if they did consider it, it must be from verbal testimony, not from view.

As a class, resemblances are admitted wherever rele-

vant. In cases involving handwriting a comparison of hands is pertinent. In sales of samples, in patent cases, in trade-mark and infringement suits resemblance is of the essence of the proof. In New York State operas have been performed in court, comic songs sung, and plagiaries of papers read. In Pennsylvania a contrivance called the Keeley Motor was exhibited with a view to the determination of the resemblance to a model described in plaintiff's bill.

In *Garvin* v. *State*, 52 Miss. 207, indictment rested on the ground that defendant was a colored man. Of this there was no proof, but as the defendant had been before the jury the court held that their inspection did away with the necessity of proof.

Jones v. *Jones*, 45 Md., 148, the Court permitted the jury to judge as to personal resemblances.

Mulhado v. *Brooklyn City R. R.*, 30 N. Y. (Court of Appeals), 370, held in action to recover damages for personal injuries that there could be no valid objection to exhibition of injured limb before the jury.

Other instances of real evidence, exhibitions of weapons, or missiles, marks of identity, race, color, age, sex, models, diagram, maps, photographs, *situs* of action, &c.

As has been said above: "Real evidence is such evidence of the thing or object as is addressed directly to the senses of the court or jury without the intervention of the testimony of witnesses." * * *

"When, for instance, the condition or appearance of any thing or object is material to the issue, and the thing or object itself is produced in court for the in-

spection of the tribunal, with the proper testimony as to its identity, and if necessary to show that it has existed in this State since the time at which the issue in question arose, this object or thing becomes itself 'real evidence' of its condition or appearance at the time in question."

It seems equally patent that when an alleged lunatic or an alleged incompetent asserts that said alleged lunatic or said alleged incompetent is physically incapacitated from coming to Court and presenting himself before said Commission and said jury it seems equally patent that in said case the only *real evidence* and *ergo* the *best evidence* concerning said alleged physical disability would be an examination upon the part of said Commission and said jury or a Committee made up of their respective members of said alleged lunatic or said alleged incompetent in said alleged lunatic's or said alleged incompetent's place of confinement. Suppose an expert in lunacy or two experts in lunacy, hired by the other side, swear that said defendant says said defendant is unable to attend court owing to a broken leg but—said experts—swear said broken leg is a *"delusion"* and does not exist in fact. Would it be heard that such said oaths could outweigh the weight of VISIBLE proof concerning said fracture of said limb?

POINT 15. Plaintiff's sanity at the time of arrest is proved by plaintiff's letter to Hon. Micajah Woods, dated July 3rd, 1897: upon Mr. Justice Harlan's opinion in the Runk case which holds that a written instrument by a person accused of insanity may successfully offset *prima facie* evidence of insanity.

(*From Trial Brief of Chaloner* against *Sherman*, pp. 482-495.)

TWO EXCERPTS FROM THE TEXT OF MR. JUSTICE HARLAN'S OPINION IN THE RUNK CASE.

SUPREME COURT OF THE UNITED STATES.

No. 142—October Term, 1897.

A. Howard Ritter, Executor of William M. Runk, deceased, Plaintiff-in-error, *v.* The Mutual Life Insurance Company of New York.	On a Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

(January 17, 1898.)

Mr. Justice Harlan delivered the opinion of the Court:

* * * "Besides these facts, it appeared that on the day before his death he avowed that his debts must be paid, and that they could only be paid with his life. That avowal was in a letter written to his partner, in which he said that he had deceived the latter, and could only pay his debts with his life. That letter concluded:

"'This is a sad ending of a promising life, but I deserve all the punishment I may get, only I feel my debts must be paid. This sacrifice will do it, and only this. I was faithful until two years ago. Forgive me. Don't publish this.' On

the same day he wrote to his aunt, to whom he was indebted in a large sum, saying, among other things: 'Forgive me for the disgrace I bring upon you, but it is the only way I can pay my indebtedness to you.' In addition he left for the guidance of his Executor a memorandum of his business affairs prepared just before his death, and which tended to show that he was at that time entirely himself.

"In view of these and other facts established by the evidence, the Court did not err in disaffirming the first and second of plaintiff's points. We may add to that, under the charge to the jury, it became unnecessary for them to inquire whether the policies were taken out with the intention of defrauding the insurance company or of committing suicide. The Court said to the jury:

"'What constitutes insanity, in the sense in which we are using the term, has been *described to you, and need not be repeated.* If this man understood the consequences and effects of what he was doing or contemplating, to himself and to others, if he understood the wrongfulness of it, as a sane man would, then he was sane, so far as we have occasion to consider the subject; otherwise he was not. Here the insured committed suicide, and, as the evidence shows, did it for the purpose as expressed in his communication to the Executive of his will, as well as in letters written to his aunt and his partner, of enabling the Executor to recover on the policies and use the money to pay his obligations. I therefore charge you that if he was in a sane condition of mind at the time, as I have described, able to understand the moral character and consequences of

his act, his suicide is a defense to this suit. The only question, therefore, for consideration is the question of sanity. There is nothing else in the case. That he committed suicide and committed it with a view to the collection of this money from the insurance companies and having it applied to the payment of his obligations, is not controverted, and not controvertible. It is shown by his own declaration, possibly not verbal, but written. The only question, therefore, is whether or not he was in a sane condition of mind, or whether his mind was so impaired that he could not, as I have described, properly comprehend and understand the character and consequences of the act he was about to commit. In the absence of evidence on the subject he must be presumed to have been sane. The presumption of sanity is not overthrown by the act of committing suicide.'"

The said Runk had been guilty of what any expert in insanity would denominate the act of a madman, under the plea that suicide is the act of a man suffering from "suicidal mania." The Court below agreed in said presumptive evidence of insanity, which is furnished by the act of suicide. Said Court said, to wit: "Suicide may be used as evidence of insanity." Mr. Justice Harlan affirmed said *dictum* of said lower Court by saying, to wit: "Nothing said by the Court upon the question of insanity was erroneous in law." *Ergo,* Mr. Justice Harlan held that the act of suicide is *prima facie* evidence of insanity. But Mr. Justice Harlan also agreed with said lower Court in holding that said *prima facie* evidence of insanity might be offset. *Mr. Justice Harlan agreed with said lower Court that said prima facie evidence of insanity might be offset by what? By*

expert testimony to the contrary? By sworn allegations by eye witnesses to the contrary? No. By a far simpler, by a far surer means, to wit: By the acts of said alleged insane person's mind, as shown by a written instrument upon the part of said alleged insane person: By a letter in short.

Said Runk had written a letter to said Runk's business partner and to said Runk's aunt touching upon the motive of said suicide, as well as a business memorandum to said partner. As nothing to the contrary is alleged it may be presumed that said letters and said memorandum were rather brief, or at least nothing comparable for length with said letter written by plaintiff to said Hon. Micajah Woods, July 3rd, 1897, within less than four months from the time of plaintiff's arrest and imprisonment as a lunatic in said Society of the New York Hospital at White Plains, and almost four years before plaintiff was able to escape from said false imprisonment. (Transcript of Record, folios 306-339.)

Furthermore. It may be presumed that said two letters and memorandum upon the part of said Runk were necessarily—from their said rather brief nature—far less sustained specimens of argument and memory than said letter of plaintiff presented.

Said letter of plaintiff was over thirty pages of typewriting in length. Said letter of plaintiff contained an exhaustive examination of the causes which led up to plaintiff's arrest and incarceration upon a false and perjured charge of lunacy, besides an exhaustive account of plaintiff's business affairs directly connected therewith, besides a legal discussion of plaintiff's status and plans for legal redress, which said plans were carried out, almost to the letter, by plaintiff years later, upon plaintiff's escape. Furthermore, said letter, which was written by plaintiff by hand in ink, is presumptive

proof, of the strongest, of plaintiff's entire sanity and self-control at the time of the writing thereof. Handwriting is a prolific proof of unsoundness of mind. The "paretic tremor" is a technical phrase employed by alienists to describe the shakiness of handwriting upon the part of a certain class of lunatics. Moreover, lunatics show their lack of balance in their chirography, by the untidiness thereof, the meaningless flourishes therein, the slovenliness of the formation of the characters, and the general wild look of the written page. Nothing of the sort is discoverable in plaintiff's said letter of July 3rd, 1897. There is no sign of tremor. There is no sign of slovenliness. There is not a single blot, not a single erasure, nor a single word crossed out. Considering the circumstances under which said unusually lengthy letter was written, namely, secretly, at night, with a keeper in the next cell, and another on watch —or supposed to be—outside said cell's door, considering said circumstances plaintiff maintains that such a performance in penmanship was a feat any man not a teacher of handwriting might feel proud of. Furthermore. Said letter furnishes proof in abundance of one of the strongest proofs of sanity, namely, memory. Said letter goes as far back as 1888 in tracing the causes of the family feud. Said letter goes most minutely into the business occurrences at the Hotel Kensington, New York, December, 1896, which led up to plaintiff's said false arrest and false imprisonment, upon a false charge of lunacy, a few weeks later.

Fortunately for plaintiff, plaintiff had kept the original* of the letters: Letter from a female relative of plaintiff, to plaintiff, under date June 23rd, 1888, signed —Daisy: Two of said letters are from plaintiff's said

*On file in Chaloner against Sherman.

brother, Mr. Winthrop Astor Chanler, to said sister of plaintiff under date June 19th, and June 22nd, 1888, signed W. The last of said letters is from said Mr. Winthrop Astor Chanler to plaintiff under date June 21st, 1888, signed—W. received by plaintiff as far back as June, 1888, which amply prove the ill-feeling engendered by plaintiff's said wedding in said month and year. The fact that plaintiff accurately stated said ill-feeling's date, corroborated as said date and said ill-feeling are by said letters, is ampler proof of plaintiff's power and accuracy of memory. Said letters, of course, were in plaintiff's despatch box at plaintiff's home in Virginia at the time of plaintiff's arrest and imprisonment, and at all other times until plaintiff escaped to Virginia and recovered them.

Furthermore. Truthfulness is not a sign of insanity, in fact truthfulness is quite the reverse. Insanity is even more prolific of untruthfulness than many persons' sanity. Not a single material statement made by plaintiff in said letter has failed of endorsement by proof since plaintiff's escape.

The letter from the late Sylvester J. O'Sullivan,* formerly New York manager of "The United States Fidelity and Guaranty Company," 66 Liberty St., New York," proves plaintiff's assertion that plaintiff never was a resident of said Hotel Kensington, particularly not in 1896 and 1897, since said O'Sullivan was the proprietor of said Hotel Kensington from April, 1894, to April, 1897.

If two, presumably brief, notes and a business memorandum offset the actual undoubted presence of presumptive proof—suicide—of insanity in the case of the unfortunate Runk, how much more should such a letter as that of plaintiff offset, not so strong a thing as

*On file in Chaloner against Sherman.

presumptive proof, but so fishy a thing as the bought and paid for affidavits of two professional Examiners-in-Lunacy? In conclusion: A further written instrument upon the part of plaintiff—the extract from plaintiff's said letter to said "first New York lawyer"—under date of March 26th, 1900—proves plaintiff to be possessed of almost prophetic powers of observation: for plaintiff therein describes the dishonesty of the then New York State Commission in Lunacy, and in less than twelve months from date, President—then Governor—Roosevelt had removed the President of said Commission from office owing to charges preferred and proved against said President.

Plaintiff maintains that sanity is proved by what a person can do with said person's mind. *That sane thinking is a proof positive—the ultimate and final test —of sanity.*

To refer once more to Mr. Justice Harlan's said opinion, quoting the lower Court:

> "Suicide may be used as evidence of insanity, but standing alone it is not sufficient to establish it * * *. If you find him to have been insane, as I have described, your verdict will be for the plaintiff, otherwise, it will be for the defendant."

It thus appears that the case was placed before the jury upon the single issue as to the alleged insanity of the assured, at the time he committed suicide, and with a direction to find for the plaintiff if the assured was insane at that time, and for the company if he was then of sound mind.

Assuming that the jury obeyed the instructions of the Court, their verdict must be taken as finding that

the assured was not insane at the time he took his life. We must then inquire whether the observations of the Trial Court on the subject of insanity were liable to objection.

We have seen that the plaintiff asked the Court to instruct the jury that if the assured intentionally killed himself when his reasoning faculties were so far impaired by insanity that he was unable to understand the moral character of his act, even if he did understand its physical nature, consequences and effect, such self-destruction would not of itself prevent recovery upon the policies.

This was the only instruction asked by the plaintiff which undertook to define insanity, and as before stated, it was given by the Court. But in giving it the Court said:

> "We must understand what is meant and intended by the term 'moral character of his act.' It is a point which has been used by the Courts, and is correctly inserted in the term; but it is a term which might be misunderstood. We are not to enter the domain of metaphysics in determining what constitutes insanity, so far as the subject is involved in this case. If Mr. Runk understood what he was doing, and the consequences of his act or acts, to himself as well as to others—in other words, if he understood, as a man of sound mind would, the consequences to follow from his contemplated suicide, to himself, his character, his family, and others, and was able to comprehend the wrongfulness of what he was about to do, as a sane man would—then he is to be regarded by you as sane. Otherwise he is not."

Substantially the same observations were made in that part of the charge, which is above given.

The plaintiff insists that the definition of insanity, as given by the Trial Court, was much narrower than was required or permitted by the decisions of this Court. It is said that the impairment not only of the moral vision, but also of the will, leaving the deceased in a condition of inability to resist the impulse of self-destruction, has been accepted by this Court as describing a phase of insanity or mental unsoundness. One of the cases to which plaintiff referred in support of this view is Davis *v.* United States, 165 U. S., 373, 378, which was a prosecution for murder. It was there held that the accused was not prejudiced by the following instructions given to the jury: "The term insanity, as used in this defense means such a perverted and deranged condition of the mental and moral faculties as to render a person incapable of distinguishing between right and wrong, or unconscious at the time of the nature of the act he was committing; or where, though conscious of it and able to distinguish between right and wrong, and know that the act is wrong, yet his will, by which I mean the governing power of his mind, has been otherwise than voluntarily so completely destroyed that his actions are not subject to it, but are beyond his control." This was substantially what had been held by this court in previous cases. Life Ins. Co. *v.* Terry, 15 Wall, 580; Bigelow *v.* Berkshire Ins. Co., 93 U. S. 284; Insurance Co. *v.* Rodel, 95 U. S. 232; Manhattan Ins. Co. *v.* Broughton, 109 U. S. 121; Connecticut Ins. Co. *v.* Lathrop, 111 U. S. 612; Accident Ins. Co. *v.* Crandall, 120 U. S. 527. In Terry's case above cited—which was an action upon a life policy declaring the policy void if the assured died by his own hand—it became necessary to instruct the jury on the subject of insanity. The Court said: "We

hold the rule on the question before us to be this: If the assured, being in the possession of his ordinary reasoning faculties, from anger, pride, jealousy, or a desire to escape from the ills of life, intentionally takes his own life, the proviso attaches, and there can be no recovery. If the death is caused by the voluntary act of the assured, he, knowing and intending that his death shall be the result of his act, but when his reasoning faculties are so impaired that he is not able to understand the moral character, the general nature, consequences, and effect of the act he is about to commit, or when he is impelled thereto by an insane impulse which he has not the power to resist, such death is not within the contemplation of the parties to the contract, and the insurer is liable."

Recurring to the ruling of the court in the present case, it is not perceived that the plaintiff had any ground to complain that its definition of insanity was too strict or too narrow. His fifth point, in general terms, defined insanity as being a condition in which the reasoning faculties are so far impaired that the person alleged to be insane when committing self-destruction was unable to understand the moral nature of his act, even if he understood its physical nature. This definition was not rejected. On the contrary, it was accepted, the court at the time making some observations deemed necessary to show what, in law, was meant by the words "moral nature of his act." By these observations the jury were informed that if the assured understood what he was doing, and the consequences of his act or acts to himself and to others—that is, if he understood, as a man of sound mind would, the consequences to follow from his contemplated suicide, to himself, his character, his family, and others, and was able to comprehend the wrongfulness of what he was about to do, as a sane man

would—then he was to be regarded as sane; otherwise, not.

It is suggested that the attention of the jury should have been brought specifically or more directly to the fact that unsoundness of mind exists when there is an impulse to take life which weakened mental and moral powers can not withstand—a condition in which there is no continued existence of a governing will strong enough to resist the tendency to self-destruction. But the words of the charge, although of a general character, substantially embodied these views. The Court stated the principal elements of a condition of sanity as contrasted with insanity. What it said was certainly as specific as the instruction asked by the plaintiff. If the plaintiff desired a more extended definition of insanity than was given, his wishes, in that respect, should have been made known. The court having affirmed his view of what was evidence of insanity, and such affirmance having been accompanied by observations that brought out with more distinctness and fullness what was meant by the words "moral character of his act," the plaintiff has no ground to complain; for nothing said by the court upon the question of insanity was erroneous in law or inconsistent with that which the plaintiff asked to be embodied in the charge. No error of law having been committed in respect to the issue as to the insanity of the assured, it is to be taken as the result of the verdict that he was of sound mind when he took his life."

Mr. Justice Harlan says: "*In addition* (to the said letter written by said Runk to said Runk's partner, and the said letter written by said Runk to said Runk's aunt) *he left for the guidance of his executor a memorandum of his business affairs, prepared just before his death, and which tended to show that he was at that*

time entirely at himself." Mr. Justice Harlan says further: "The Court stated the principal elements of a condition of sanity as contrasted with insanity. * * * Nothing said by the Court upon the question of insanity was erroneous in law. * * * No error of law having been committed in respect of the issue as to the insanity of the assured, it is to be taken as the result of the verdict that he was of sound mind when he took his life." We now insert what said Court said constituted sanity as opposed to insanity: "What constitutes insanity in the sense in which we are using the term, has been described to you, and need not be repeated. If this man understood the consequences and effects of what he was doing or contemplating, to himself and to others, if he understood the wrongfulness of it, as a sane man would, then he was sane, so far as we have occasion to consider the subject. * * * I therefore charge you that if he was in a sane condition of mind at the time, as I have described, able to understand the moral character and consequences of his act, his suicide is a defense to this suit. The only question, therefore, for consideration is this question of sanity. There is nothing else in the case."

A perusal of the above will prove that the Supreme Court of the United States supports plaintiff's aforesaid contention in this point.

Plaintiff maintains that sanity is shown by the action of a party's mind, not by the action of a party's muscles. Plaintiff maintains that sanity is shown by a party's words and acts, rather than by the "reflexes" of a party's knee-joints. Plaintiff maintains that sanity is shown by a party's ideas rather than by involuntary action of a party's eyelids. Plaintiff maintains that sanity is shown by the words issuing from a party's lips rather than by the mechanical action of the party's labial

muscles. Plaintiff maintains that sanity is shown by the words uttered by a party's tongue rather than by the question as to whether the party's tongue was "coated" or not "coated." Plaintiff maintains that sanity is shown by the action of the party's hands as to what the party can do with said party's hands, or write with said party's hands rather than as to whether said party's hands were warm or cold. Plaintiff maintains that sanity is shown by the question as to whether or not said party's ideas are normal rather than by the question as to whether or not said party's pupils are normal. Plaintiff maintains that sanity is shown by the quickness of said party's mind rather than by the quickness of said party's pulse. Plaintiff maintains that sanity is shown by whether or not said party's logical and reasoning powers are firm or tremulous, rather than as to whether or not said party's hands are firm or tremulous. Plaintiff maintains that sanity is shown rather by the question as to whether or not Plaintiff's mind reacts to ratiocination and questions put to Plaintiff rather than by the question as to whether or not said party's pupils re-act to light. Plaintiff maintains that sanity is shown rather by the fact as to whether or not a party thinks well, than by the fact as to whether or not a party sleeps well. Lastly, plaintiff maintains that sanity is shown rather by the question as to whether or not a party's reasoning is regular, than by the question as to whether or not said party's bowels are regular. What is insanity? Suppose a law should be enacted to the effect that certain acts or thoughts would be sufficient proof of mental derangement, and that, upon a trial, the facts appearing, the Court should direct a verdict accordingly, and property or freedom should thus be wrested from the defendant. Would such a proceeding constitute due process of law? And yet such a pre-

posterous, such a mechanical, and such a charlatanish test of sanity is today set by so-called experts in insanity, who glean certain physical, mechanical, muscular actions, which sometimes follow insanity, but in the vast majority of cases exist as mere physical idiosyncrasies, totally free from the slightest taint thereof, and—to use a technical phrase—are auxiliary, but not positive. The result of said quackery is that the public is being gulled into believing that insanity is hidden in a grand arcanum of mystery, to which said grand arcanum only alleged experts in insanity hold the key, which said alleged experts will not turn without the payment of a fat fee. The result of said quackery is that people lose sight of the fact that, as has been said by the Court (*supra*), the citizen is the sovereign, by which we mean that the citizen is the final judge of things medical as well as things practical; of things scientific as well as of things simple; of things literary as well as of things non-literary; of things musical as well as of things non-musical; of things finally, religious, and things non-religious; by which we mean that when any of said above domains of human thought enter a law court, it is the sovereign, it is the plain citizen, it is the juryman and not the Judge, and not the counsel, and not the experts, *bona fide*, or alleged, who pronounce a judgment upon said things—upon the facts. Who ever heard of a patent suit involving, say, the composition of a chemical substance, so technical, so complicated, that none but expert chemists could discuss intelligently, who ever heard of any man's being grossly illiterate and grossly ignorant enough to claim that said question was beyond the reach of solution in a court of law, and, therefore, beyond the reach of a jury, and yet said grossly ignorant and grossly illiterate remark is made daily by intelligent and educated persons today,

concerning insanity; and what is commoner than to hear a party pusillanimously hide himself when asked his opinion as to a party's mental condition by a "I'm not an expert in insanity." The result of said quackery is that a growing danger—growing abreast of the growth of that portion of the medical profession known as experts in lunacy—that a growing danger menaces society today. All that is necessary to jeopardize a man's liberty, property, and happiness and threaten all three with life imprisonment, is to hire two unprincipled alleged experts in insanity to swear that said party is crazy. At once, said party's family and friends fall away from said party as though said party were a leper. At once said party's said family and friends hold up their hands in superstitious horror, and in reply to said party's modest claim that said party is all right, and that said party does not either claim the things said dishonest quacks swear said party claims, as well as that said party does not say the things said dishonest quacks swear said party says, at once said party's said family and said friends hold up their hands in igorant, illiterate horror, and exclaim, "Oh, but the doctor says you do, and that settles it."

We have gone thus deeply into said interesting and entertaining topic for several reasons. 1. *First,* because no one is so well posted upon said interesting and entertaining topic as ourselves since no one save ourselves has had so rich an opportunity to observe and ponder said topic during nearly four years of illegal false imprisonment. 2. *Secondly,* because while behind said bars and while so pondering over our wrecked life with its indelible stigma of insanity—for no matter how false the charge of insanity its stigma is indelible—we determined to do our best to prevent a repetition of such

a crime as has been perpetuated against ourselves if showing up said crime from all the points, from all the view-points, from all the angles said crime admits could do so. 3. *Thirdly,* because unless the public mind is awakened to the danger which threatens every member of the public without regard to age or sex or wealth or poverty, said band of experts in insanity will go on fattening like vampires upon the heart's blood of innocent sane men and women.

In bidding farewell to said topic it might not be amiss to draw public attention to the role played therein by the cream of said Four Hundred, so called. For example. As we said under Point 11: "Lunacy proceedings in New York State are mandatory, in derogation of the common law rights, and must therefore be strictly observed in pursuance of the statute. While said commi nent was in fact made to The Society of the New York Hospital, it was not so stated; the term Bloomingdale Asylum being used, an institution unknown to the law. As we showed further said infraction of the mandates of the New York Legislature (by virtue of its agent, the said State Commission in Lunacy, as we have shown, *supra*), said mandates, to wit: line 156 of said commitment papers: "It is essential that the official title of the institution should be correctly inserted" (Transcript of Record, p. 113, fol. 223), and again line 349: "Insert, correctly, official title of institution," and lastly lines 11 and 12, "The blanks should be carefully read and properly filled out to insure the commitment of a patient" (fol. 204). As we have shown further said infraction of the mandates of the said legislature—as aforesaid—was not once, not twice, but thrice repeated and startling as it sounds, each time in a different manner. The said role of said cream of said Four Hundred so called so begins, to wit. Through said cream of said

Four Hundred's agent, said Medical Superintendent of said Society of The New York Hospital, said cream of said Four Hundred became *particeps criminis* in said infraction of said mandates of the said legislature—as aforesaid—as follows: citing now from Section 62 of the Insanity Law of the State of New York, Chapter 545, of the laws of 1896: "The superintendent or person in charge of any institution for the care and treatment of the insane may refuse to receive any person upon any such order, if the papers required to be presented shall not comply with the provisions of this section." Said cream of said Four Hundred's said agent, said Medical Superintendent of said Society of The New York Hospital should, in compliance with said mandate contained in said Section 62, have refused to receive plaintiff, seeing that the three gross infractions of said mandates contained in line 156 and 349 to say nothing of lines 11 and 12 stared said cream of said Four Hundred's said agent, said Medical Superintendent of said Society of The New York Hospit ll in the face from said Commitment Papers. T' stion at once presents itself to the mind of an c to why said infractions said gross infrac' mandates were committed. The answer is der to avoid damage suits from the army alsely alleged lunatics who have in the 135 years during which said Society of The New York Hospital has plied said Society's nefarious trade, in order to avoid suits for damages for false imprisonment at the outraged hands of said army of falsely alleged lunatics who have, in the past 135 years, fought said army's way to liberty by the use of *habeas corpus*, in order to avoid said damage suits said cream of said Four Hundred, through said cream of said Four Hundred's said agent, deliberately threw dust in the public eye by allowing the false impression to gain ground, until now said false impression is a deeply rooted con-

viction in the public mind that said Society of The New York Hospital's falsely alleged "Bloomingdale" has no connection whatever with said Society or with any other Society, but is a *public institution*, such as Bellevue Hospital, and that Bellevue Hospital is used to receive poor lunatics, whereas said falsely alleged "Bloomingdale" is used to receive rich ones. It is easy to see that provided said false impression gets a foothold in the public mind there is small chance of damage suits at the hands of said army of falsely alleged lunatics which has successfully emerged therefrom, public opinion naturally presuming that a public institution would have no pecuniary motive in holding sane persons upon a false charge of insanity. Said cream of said Four Hundred have followed in the footsteps of said cream of said Four Hundred's predecessors. Said predecessors would be pleased could said predecessors see with what success said predecessors' scheme to hoodwink and bamboozle the public has worked. It is an amazing spectacle at this day of advanced civilization to be able to catch such men as make up said Board of Governors of The Society of the New York Hospital, to catch such men as SHEPPARD GANDY, President; THEODORUS B. WOOLSEY, Vice-President; J. EDWARD SIMMONS, Treasurer; JOSEPH H. CHOATE, WILLIAM WARNER HOPPIN, ELBRIDGE T. GERRY, PHILIP SCHUYLER, JAMES O. SHELDON, HERMANN H. CAMMANN, JAMES WILLIAM BEEKMAN, CORNELIUS N. BLISS, GEORGE S. BOWDOIN, WALDRON POST BROWN, EDWARD KING, WILLIAM ALEXANDER DUER, HENRY W. DE FOREST, EDMUND D. RANDOLPH, FORDHAM MORRIS, GEORGE G. HAVEN, FREDERICK D. TAPPEN, GEORGE G. DEWITT, AUGUSTUS D. JUILLIARD, FRANCIS LYNDE STETSON, THOMAS H. BARBER, RICHARD TRIMBLE, and DAVID H. KING attempting to fool the public and in order to fool the public having—for the

nonce—to assume the role of *quasi*-law breakers. It is an amazing spectacle, a spectacle replete with the ludicrous to catch such lawyers as Joseph H. Choate, Henry W. de Forest, George G. DeWitt, and Francis Lynde Stetson; and such lights of finance as J. Edward Simmons, Hermann H. Cammann, Cornelius N. Bliss, George S. Bowdoin, Waldron Post Brown, George G. Haven, and Augustus D. Juilliard; and such representatives of all that is blue-blooded and fashionable as William Warner Hoppin, Philip Schuyler, James O. Sheldon, James William Beekman, Edward King, William Alexander Duer, and Thomas H. Barber; and last but very far from least the name of that formidable philanthropist and director of youth, Elbridge T. Gerry himself; it is surely a laughable matter to catch archons of civilization tripping. But amusing as said spectacle is said spectacle has a somewhat serious side. Said spectacle has a decidedly serious side, to wit. The astounding revelations of the Ship-Building-Trust's wreckage—and the still more astounding revelation as to what pillars of finance were wet by the spray thereof—has prepared the public mind for the reception—touching lights of Wall Street—that all is not gold that glitters. But said Ship-Building-Trust's said wreckage was a mere matter—large as said matter was—was a mere matter of dollars and cents, whereas said tripping upon said part of said Governors of said Society of the New York Hospital is much more than a mere matter of dollars and cents, although plaintiff was practically robbed by said Society of the New York Hospital of, in round numbers, twenty thousand dollars. Said tripping means little short of this, to-wit That at this day of advanced civilization and order, and all that, there exists in the Metropolis of the United States, in the centre of wealth, and alleged culture and alleged

knowledge, there exists in New York City today an organized band of, we shall not say robbers, but we shall say robber barons, who like their prototypes of the Rhine, have a stronghold near the bank of the Rhine of America—the Hudson. Who, also like their prototype of the Middle Ages, rally forth therefrom and seize rich travelers who happen to alight within striking distance of said band of organized robber barons. Said organized band of robber barons do not personally issue forth at the head of said robber barons' retainers, as of old, but said robber barons see to it that said robber barons' retainers do so issue forth. Plaintiff was ambushed by a part of said robber barons' retainers under the leadership of the treacherous spy and eavesdropper, Dr. Moses A. Starr, the masquerading "oculist," who intended to drag plaintiff out of bed, a cold winter's night and thereupon drag plaintiff to a mad-house cell. As was said plaintiff declined to be dragged, but said declination was no part of the proposed performance of said party of said robber barons' retainers under the head-ship of said Moses A. Starr. Once within the walls of said robber barons' said stronghold each victim is systematically robbed of thousands of dollars per annum as was plaintiff. Once within the walls of said robber barons' said stronghold said victim is at liberty to follow the advice posted over the entrance to Dante's Inferno—"All hope abandon ye who enter here." Nothing but the strong arm of the law, as represented by *habeas corpus* proceedings, or lack of funds, ever opens the doors of said Inferno. Said menace to life, liberty, and property, hanging over the heads of each and every sojourner in the City of New York, is a rather serious thing. Said menace is a rather serious thing, from more points of view than one. One of said points of view regards said sojourner. One of said points of view regards the future prosperity of

New York City. Said first point of view is too obvious to need discussion. Said second point of view is as follows. Competition has set in between Philadelphia and Baltimore as regards attracting "buyers" away from New York. So soon as "buyers" learn that there is danger of said "buyers" never leaving New York City alive—provided said "buyers" are unfortunate enough as to have any little unpleasantness with said "buyers'" wives or said "buyers'" families which may lead said wives or said families to desire never to see said "buyers" again, or merely to obtain possession of said "buyers'" property, by having said "buyers" secreted for life in the said Society of the New York Hospital—said "buyers" will likely choose a healthier place to buy in. We have gone into said topic rather at length in order that people may know of the traffic in men and women, in flesh and blood, which is being carried on today in the heart of the alleged centre of civilization on this continent. In close connection therewith, however, arises another point. Said point, to-wit. Anybody reading attentively the evidence in plaintiff's said trial in 1899 will be struck by the thinly veiled hostility and bitterness, not to say brutality, and cruelty—coming especially as said testimony does from the mouths of followers of the Healing Art—the thinly veiled cruelty and brutality of said testimony upon the part of the said Messrs. Flint and Macdonald. The cause of said thinly veiled brutality and hostility is this. As will be seen from the following excerpts from said Macdonald's sworn statement, concurred in by the statement, not sworn to, owing to illness, but approved of by said Flint, as will be seen from said following excerpts plaintiff spoke as frankly, concerning the turpitude aforesaid of SHEPPARD GANDY, THEODORUS B. WOOLSEY, J. EDWARD SIMMONS, JOSEPH H. CHOATE, WILLIAM WARNER HOPPIN, ELBRIDGE T.

GERRY, PHILIP SCHUYLER, JAMES O. SHELDON, HERMANN H. CAMMANN, JAMES BEEKMAN, CORNELIUS N. BLISS, GEORGE S. BOWDOIN, WALDRON POST BROWN, EDWARD KING, WILLIAM ALEXANDER DUER, HENRY W. DE FOREST, EDMUND D. RANDOLPH, FORDHAM MORRIS, GEORGE G. HAVEN, FREDERICK D. TAPPEN, GEORGE G. DEWITT, AUGUSTUS D. JUILLIARD, FRANCIS LYNDE STETSON, THOMAS H. BARBER, RICHARD TRIMBLE, DAVID H. KING, JR., HOWARD TOWNSEND and GEORGE F. BAKER before said physicians as plaintiff has written frankly above. Of course, being alleged experts in insanity, said Flint and said Macdonald found it beyond their powers to tell the truth, and consequently lied in a most barefaced and villainous manner in said gentlemen's said statements as well as in said gentlemen's sworn testimony against plaintiff's sanity and competency. Said excerpts to-wit. Page 2, Proceedings 1899 (Transcript of Record, p. 120, fol. 234): "the 16th day of March, 1898, when deponent, together with said Doctor Austin Flint, spent two hours in conversation with said Chanler, in his own apartments at Bloomingdale; that at the time of said visit deponent carefully examined the said John Armstrong Chanler, who immediately began to explain his case to deponent and the said Doctor Flint and said, among other things, that he was the victim of a gigantic conspiracy on the part of his relatives * * * the other conspirators being prominent citizens of the City of New York were named by the said John Armstrong Chanler, including prominent lawyers and judges of the said city." * * * (P. 122. fol. 238), "Deponent, together with the said Austin Flint, again visited the said John Armstrong Chanler in his apartments at Bloomingdale on April 9th, 1898; that at the said time, the said Chanler was not completely dressed and acted in a strange manner; that, among other things, he took from

under the mattress of his bed a large volume of manuscript, to which he called our attention, stating that it was his case, and that no one but himself knew its contents, and that he intended to read it on the witness stand when his case came up in court." * * * (Page 7, *ibid.*) "that he recited to deponent and the said Doctor Austin Flint, seven or eight sonnets of his own composition (p. 124, fol. 242). * * * He went into a trance at the request of deponent and gave the most vivid illustrations of the death of Napoleon * * * Deponent further says that the foregoing are a few instances of a most violent and tragic talk with the said John Armstrong Chanler, which lasted as aforesaid over an hour: and that the said talk was accompanied with denunciations of vile conspiracies against him." * * * (Page 119, fol. 233.) Carlos F. Macdonald being called as a witness, for the petitioners, was duly sworn, and testified as follows: By Mr. Candler * * * Q. "Officially connected with any hospital?" A. "I have been officially and professionally connected with hospitals and asylums—hospitals for the insane and asylums since 1870 * * * and for seven or eight years President of the State Commission in Lunacy, in this State" * * * Q. "During that time you examined many cases of mental disease?" A. "Yes, sir, many thousands * * * several thousand cases a year." Q. "Have you served on a special commission appointed by the governor of the State?" A. "Yes, sir, frequently." Q. "For what purpose?" A. "For the purpose of determining the mental condition of persons under sentence of death. I think I served on every commission under Governor Cleveland, Governors Morton, Hill and Flower, with one or two exceptions." * * * Q. "Are you acquainted with John Armstrong Chanler, the respondent here?" A. "Yes, sir." Q. "Have you visited him in the

Bloomingdale Asylum for the Insane?" A. "Yes, sir. * * * I first visited John Armstrong Chanler at the Bloomingdale Asylum for the Insane on March 16th, 1898, in company with Doctor Austin Flint, of this city. We went up there to the institution and jointly made a personal examination of Mr. John Armstrong Chanler. * * * We informed Mr. Chanler who we were and the purpose of our visit; that we were there to examine him as to his mental condition. He received us cordially and immediately began, as he said, to explain his case. He said he was a victim of a gigantic conspiracy on the part of his relatives—the other conspirators being Joseph H. Choate, Elbridge T. Gerry, Cornelius N. Bliss, Judge Beekman and several others whom he named, that they had subsidized the State and National Government which were arrayed against him; that his case was thoroughly prepared." Q. "He named Mr. Choate and Mr. Gerry and others?" A. "He named, I think, the most of them were members of the Board of Governors of the New York City Hospital, as that is a branch—of which Bloomingdale is a branch." Q. "That is the reason they were selected?" A. "Yes, sir. That they had subsidized the State and National Government which were arrayed against him; that his case was thoroughly prepared and would be taken up by the court." Dr. Samuel B. Lyon, Superintendent of the Society of the New York Hospital, on the stand (Transcript of Record, pp. 117-118). (Page 14 Proceedings, 1899) By Commissioner Fitch. Q. "I notice in the certificate that he (plaintiff) only took certain articles of food about two years ago restricting himself to diet; does he still do that?" A. "He still continues vegetable diet. I am not aware that he has eaten any meat since he was with us." * * * (Page 118, *ibid*). A. "I do not know whether I mentioned it, but he thinks there is a conspiracy of the Wall Street clique. He mentioned

Choate * * * he thinks we are understrappers, and he is very amiable now." Citing finally from the deposition of said Dr. Lyon on Page 82, fol. 158. "That he (said Dr. Lyon) believes the said John Armstrong Chanler to be insane and unable to manage himself or his affairs, and that the grounds of his belief are as follows: That since the patient's admission to Bloomingdale, he has had delusions that conspiracies existed against his life and happiness; he has passed his nights in watching, has often declared his belief in his own prominent talents as a lawyer, pugilist, poet, etc., that while really a very bright man naturally, he has now the delusion that his mental powers are almost supernatural, and that his personality has undergone a change and that he now has a very high mission to fulfill toward the world. His disease appears to pursue the typical course of what is known as systematized delusional insanity, beginning with suspicions of persecution by enemies for a purpose and later developing expansive ideas of his own personality."

Examining now said excerpts in detail. Taking first said excerpt (Transcript of Record, p. 87, fol. 169, page 2, Proceedings 1899). Said Macdonald says: "said John Armstrong Chanler * * * said among other things that he was the victim of a gigantic conspiracy on the part of his relatives * * * the other conspirators being prominent citizens of the city of New York who were named by the said John Armstrong Chanler, including prominent lawyers and judges of the said city." The "prominent citizens" were the said Governors of The Society of the New York Hospital in that said gentlemen were behind said Hospital which illegally—since plaintiff on the evidence arrived at said Hospital sane and remaind sane in spite of the aforesaid efforts of the Medical Staff thereof—exclusive of said Dr. Samuel

B. Lyon, the Medical Superintendent thereof, who never molested plaintiff in any way and did his best to render plaintiff's enforced false imprisonment as little irksome as lay in said Dr. Lyon, the Medical Superintendent thereof, who never molested Staff thereof to argue plaintiff into admitting that plaintiff was insane and thereby becoming insane—the "prominent citizens" were the said Governors of The Society of the New York Hospital, in that said gentlemen were behind said Hospital which illegally, for the reason aforesaid, to say nothing of the utter illegality and nullity of the said Commitment Proceedings before Justice H. A. Gildersleeve aforesaid, which illegally held plaintiff a prisoner upon a false charge of lunacy, at a ransom of one hundred dollars per week, not counting extras. That said gentlemen being behind such a nefarious institution as The Society of the New York Hospital on the evidence, has proved said Society to be, that said gentlemen being behind such a, so to speak, "dead-fall" such an oubliette, as said Society has upon the evidence proved said Society to be, are conspirators against the public. Taking, second, said excerpt (Transcript of Record, p. 88, fol. 170, page 4) (Proceedings 1899). Said Macdonald says, "at the said time the said Chanler was not completely dressed." When the facts are known the above will appear to be what above is, to wit, a venomous, mendacious inference that there was something insane and unbalanced in plaintiff's being "not completely dressed." The simple fact was that plaintiff had been working over plaintiff's brief rather late the night before and in order to make up for lost sleep had slept later than usual and was still in bed when said Macdonald called. Said Macdonald goes on "and acted in a strange manner; that, among other things, he (plaintiff) took from under the mattress of his bed a large volume of manu-

script, to which he called our attention, stating that it was his case, and that no one but himself knew its contents." What is there strange in that? Plaintiff was alone among people spying upon him day and night as the record proves. Plaintiff had no one to rely on but himself. Plaintiff therefore kept plaintiff's important papers where no one could touch them, while plaintiff slept, without rousing plaintiff. When plaintiff later obtained a despatch-box plaintiff ceased putting said manuscript under said mattress at night and kept plaintiff's papers therein under lock and key. Taking, third, said excerpt (p. 119, fol. 234) (by Mr. Candler) Q. "Have you served on special commissions appointed by the Governor of the State?" A. "Yes, sir, frequently." Q. "For what purpose?" A. "For the purpose of determining the mental condition of persons under sentence of death." It is to be hoped that upon said sinister occasions said Macdonald showed more learning and more honesty than said Macdonald has displayed toward plaintiff. Said Macdonald goes on. "We (said Macdonald and Flint) informed Mr. Chanler who we were and the purpose of our visit; that we were there to examine him as to his mental condition." As plaintiff shows in plaintiff's said affidavit the above is only a half-truth. Said Macdonald and Flint did say they "were there to examine him (plaintiff) as to his mental condition." The only difficulty about said statement being that it quite sinks the fact that said Macdonald and said Flint were guilty of gross falsehood when they went into the question as to whom they represented. Said gentlemen saying in reply to plaintiff that said gentlemen represented no one, while the fact is, as the said proceedings prove, said gentlemen were in the pay of the other side. Said Macdonald goes on "He received us cordially and immediately began, as he said, to ex-

plain his case." Why put in the slur, "as he said," unless said Macdonald desired—as said Macdonald's said testimony abundantly proves—unless said Macdonald desired to put in a slur upon plaintiff at all and sundry opportunities for slurs in season and out of season. Said Macdonald goes on: "He said he was a victim of a gigantic conspiracy on the part of his relatives * * * the other conspirators being Joseph H. Choate, Elbridge T. Gerry, Cornelius N. Bliss." The said Governors of the said Society of the New York Hospital were in fact conspirators as aforesaid. Said Macdonald goes on: "Judge Beekman and several others whom he named; that they had subsidized the State and National Government which were arrayed against him; and his case was thoroughly prepared." Plaintiff did not mention Judge Beekman. Neither did plaintiff make the absurd statement attributed to plaintiff concerning the State and National Government. What plaintiff did say was that apparently the proprietors of Private Madhouses in New York State had apparently pretty effectually subsidized the New York State legislature of 1896; for how otherwise could the passage of so iniquitous a lot of laws and so wholly illegal a lot of laws as some of the Lunacy Laws of said legislature, passed in 1896, be accounted for? Q. "He named Mr. Choate and Mr. Gerry and others?" A. "He named, I think the most of them were members of the Board of Governors of the New York City Hospital, as that is a branch—of which Bloomingdale is a branch." Q. "That is the reason they were selected?" A. "Yes, sir. That they had subsidized the State and National Government which were arrayed against him; that his case was thoroughly prepared and would be taken up by the court." Said Macdonald again displays said Macdonald's mendacious venom here. For fear that a true

impression would be created by allowing the fact that the men plaintiff criticized were criticized because said men were Governors of said Society of said New York Hospital so soon as said fact was reluctantly drawn out of said Macdonald, said Macdonald hastens to wipe out the good effect of said fact by reiterating said absurd falsehood *in re* the array of the State and National Governments. Taking, fourth and last, said excerpt (p. 117, fols. 230-231) (page 14, Proceedings 1899) (Dr. Samuel B. Lyon on the stand). (By Commissioner Fitch): Q. "I notice in the certificate that he (plaintiff) only took certain articles of food about two years ago, restricting himself to diet; does he still do that?" A. "He still continues vegetable diet. I am not aware that he has eaten any meat since he was with us." Is it not a laughable thing that the charge of insanity in this day of advanced civilization can be preferred against a party because he happens to be a vegetarian, for the practical reason that said party finds—as all doctors who have studied the subject have found—that all meat red and white is more or less gout-producing and rheumatism producing, especially in a party who happens to have an inherited tendency to gout; which said tendency shows itself if said party indulges in wine, beer and spirits, and eats meat with or without wine, beer or spirits, but not otherwise? (Page 118, fol. 231, *ibid.*) A. "I do not know whether I mentioned it, but he thinks there is a conspiracy of the Wall Street Clique. He mentioned Choate * * * he thinks we are understrappers, and he is very amiable now." The above being interpreted means. When plaintiff was first incarcerated in The Society of The New York Hospital plaintiff, having a fairly good idea of human nature, and plaintiff's fellow man, was, however foolish enough and fresh enough to

think that no men are wholly bad; that no men can play the role of incarnate fiends; strangers to truth, strangers to honesty, strangers to human sympathy, and strangers, finally, to the veriest shred or fragment of anything most remotely resembling common humanity. Plaintiff did not know the Governors of The Society of the New York Hospital and their allied doctors and lawyers. Plaintiff foolishly and freshly surmised that once the Medical Staff of The Society of the New York Hospital had had a couple of weeks to observe plaintiff, and to learn upon questioning plaintiff, that plaintiff's views anent spirits and spiritualism and all and any alleged supernatural agency at work in this practical work-a-day world were precisely what said views were shown to be in plaintiff's said examination at the hands of Professor Horatio Curtis Wood, M. D., aforesaid, *supra;* plaintiff foolishly and freshly surmised that once said Medical Staff had two weeks to examine plaintiff in that then said Medical Staff not being incarnate fiends, not being men who for pay would consign a man to a living tomb, to a fate, in the eyes of any man of intelligence and activity, to a fate worse than death, to a madhouse cell for life; plaintiff foolishly and freshly surmised that in said event said Medical Staff, not being fiends would promptly report to said Dr. Lyon, the Medical Superintendent of The Society of the New York Hospital that plaintiff was sane and therefore, of course, must be released. The said two weeks rolled slowly by. During said two weeks plaintiff was as polite and obliging to said Medical Staff as was possible to be. Plaintiff aided said Medical Staff's efforts at examining plaintiff in every way in plaintiff's power. Plaintiff allowed said Medical Staff to obtrude itself upon plaintiff at all hours of the day or night. Plaintiff always received said Medical Staff upon such occasions cor-

dially. Plaintiff freely discussed all and any of the phases of plaintiff's case that said Medical Staff desired to hear discussed. In short plaintiff was complaisance itself. At the end of said two weeks, however, plaintiff saw that plaintiff had overestimated said Medical Staff, that said Medical Staff were in fact no better than so many incarnate fiends—as incarnate fiends have been above outlined to be. Thereupon plaintiff's attitude toward said Medical Staff instantly changed and plaintiff accused said Medical Staff to said Medical Staff's face of being quacks of the most degenerate and abandoned type. This sort of thing kept up for months, Plaintiff frankly laughing at the open and above-board rascality of said Medical Staff in said Medical Staff's face. Said laugh of plaintiff's did not strike a sympathetic chord in said Medical Staff, but said Medical Staff had to stand said laugh whenever said Medical Staff obtruded itself upon plaintiff. With the lapse of years plaintiff's righteous indignation, not only as a man, but as an officer of the Court, at such criminal doings within the center of the Metropolis of the United States, plaintiff's said indignation not cooled but centered against the leading criminals in said criminal doings, to wit, the said Governors of the Society of the New York Hospital. Plaintiff at once changed plaintiff's tone toward said Medical Staff; Plaintiff sent for said Medical Staff and said in effect: "I have experienced a change of heart—but not of head. I have concluded to practice pretty high Christianity and forgive you, gentlemen, for your share in this game of rascality and not pursue you, gentlemen, in the Courts for false imprisonment, as I had decided. I have determined to let you gentlemen alone and look to The Society of the New York Hospital alone. My reason for so doing is, you are mere understrappers in this affair. You are

hired by the Governors of the Society of the New York Hospital to hold all men and all women run in here under the present illegal laws on Lunacy of the State of New York, to hold all men and all women run in here, whether insane or sane, for so long as the parties who ran said men and women in here put up a sufficiently fat fee for holding sane men and sane women illegal prisoners. This institution is not, as is popularly supposed, a public institution nor is this institution an eleemosynary institution. This institution is a purely money-making concern, travelling under a false name, contrary to law and doing a nefarious trade in men and women. If you did not do the said bidding of the said Board of Governors of The Society of the New York Hospital, you would lose your job. The proof of the pudding is in the eating thereof. If what I allege against the Board of Governors aforesaid, were not strictly unexaggerated, were not strictly true, why is it that there is no case on record of a party committed here against said party's will, ever being set free until said party had called in the strong arm of the law and worked a *habeas corpus* on you? There is hardly a year goes by that one man or woman—sane man or woman, and sometimes more than one in a given year—there is hardly a year by that one man or one woman, perfectly sane, does not fight his or her way out of 'Blomingdale,' falsely so-called. Having come to the aforesaid conclusion, I am prepared to make allowance for human nature and to admit that, from a business point of view, but only from said point of view, you are right to hold your jobs." From that day plaintiff was as said Dr. Lyon says, *supra*, "I do not know whether I mentioned it, but he thinks there is a conspiracy of the Wall Street Clique (p. 118, fol. 231). He mentioned Choate * * * he thinks we are understrappers and

he is a very *amiable* now." The foremost round for said Dr. Lyon's belief that plaintiff was "insane and unable to manage himself or his affairs" was "That since the patient's admission to Bloomingdale he has had delusions that conspiracies existed against his life and happiness." Said Dr. Lyon's second ground for said Doctor's belief that plaintiff was "insane," etc., was "He has passed his night in watching." Dr. Lyon aforesaid here becomes classical in said Doctor's diction, and employs an old English use of the word "sit" or "sit up" at night for "watch." Plaintiff was in the habit of sitting up very late writing or reading at night, for the reason that at that time the lunatics are usually asleep, and therefore less prone to yelling than when said lunatics are awake in the day time. Said Dr. Lyon's third ground for said Doctor's belief that plaintiff was "insane," etc., was that while said Medical Staff were continually calling plaintiff to plaintiff's face—an incompetent person—before plaintiff experienced said change of heart and forgave said Medical Staff, that while said Medical Staff were continually depreciating plaintiff's personal stock — so to speak — plaintiff having no one to say so much as a good word for plaintiff, plaintiff made bold to put in as a plea in rebuttal of the aforesaid charges of insanity and folly the claim to being an all-round man, that is to say a rounded man, one developed physically, intellectually, and artistically, and plaintiff brought forward as proof of said contentions the fact of record, that plaintiff could spar, that plaintiff was a lawyer, and that plaintiff could write sonnets which the witnesses of the other side admitted were "certainly of a most extraordinary nature and very brilliant in a way." To put it mildly, said Dr. Lyon is in error when said Doctor avers "he has now the delusion that his mental

powers are almost supernatural." Said Dr. Lyon is good enough to gild the above monstrous pill with the remark that plaintiff is "really a very bright man naturally." Said Dr. Lyon's fourth ground for said Doctor's belief that plaintiff was "insane," etc. was "and that his personality has undergone a change and that he now has a very high mission to fulfill toward the world." Plaintiff's personality had undergone a two-fold change during plaintiff's long incarceration at White Plains. Said change was partly physical and partly mental. Said physical change was that plaintiff, from being a *quasi*-vegetarian, when plaintiff entered The Society of the New York Hospital, ended by becoming, before the nearly four years of imprisonment were terminated, by escape, ended by becoming a strict vegetarian. Said mental change, to wit. While not caring to undergo the charge of cynicism, plaintiff, to be honest, must admit that plaintiff's experiences with plaintiff's fellow man at The Society of the New York Hospital—and all that that phrase entails—that plaintiff is certainly not open to the charge of being—so far as human nature is concerned, and the depths of murderous rascality to which, upon temptation, human nature readily sinks—plaintiff touching human nature is certainly not open to the charge of optimism. Plaintiff as a lawyer and mindful of plaintiff's oath does not hestitate to assert that plaintiff would be recreant to plaintiff's profession as well as to plaintiff's said oath did plaintiff, as an officer of the Court, allow such a crime and such a criminal combination as is represented by the past action of the other side and all that that entails, to go undenounced. Said Dr. Lyon's peroration—so to speak—is a pretty example indeed of the cry of wolf. Said Dr. Lyon says, "His disease appears to pursue the typical course of what is known as systematized delusional in-

sanity, beginning with suspicions of persecutions by enemies for a purpose and later developing expansive ideas of his own personality." Plaintiff's "disease" was one which attacks all lawyers worthy of the profession, when said lawyer's rights are menaced. Plaintiff's "disease" was one which attacks all honest men, whether lawyers or laymen, who find themselves in a den of thieves. Plaintiff's "disease" in short knew but one cure and said cure was a speedy entry into Court. The cry of "wolf" is shown from the fact that everybody, every sane body that is, who finds himself or herself in the clutches of The Society of the New York Hospit[illegible]ires redress. Upon fighting their way out by *habeas corpus* proceedings said parties let the matter rest there. Plaintiff fails to find how plaintiff has "developed expansive ideas of his own personality." A close inspection of said proceedings in 1897, as well as of said proceedings in 1899, as well as of said proceedings in 1901, will develop the fact that plaintiff far from "developing expansive ideas of his own personality" has spent time and money in undeveloping the bogus personality which the expansive mendacity of the doctors in the pay of the other side has foisted upon the said record, so-called, of 1897, and the said record, so called, of 1899, where said bogus personality has been allowed to masquerade—owing to the fact that plaintiff has not yet been able to have plaintiff's day in Court—where said bogus personality has masqueraded in veritable harlequin colours in lieu of the quiet law-abiding, studious colours which distinguish plaintiff's true personality on the evidence furnished by the record of said proceedings in 1901. In closing said branch of this question a query obtrudes itself. Said query to wit: Why should Dr. Carlos F. Macdonald and Dr. Austin Flint, Senior, aforesaid display so much thinly veiled venom towards plaintiff? Plaintiff had

never by deed or word injured either of said Medical men. The answer to said query is not hard to find. The answer to said query is as follows. As appears from the said proceedings in 1899 plaintiff has denounced all parties to said conspiracy as freely as plaintiff has denounced said parties in plaintiff's said brief. Plaintiff had said to said Doctors that sooner or later plaintiff, along with plaintiff's said brief, would get to Court. Plaintiff gave as a reason for said bold—under the circumstances, plaintiff being at said time laid by the heels in a madhouse cell—assertion that plaintiff had a pretty thoroughly developed will-power, and that said will-power was ample, not only to preserve plaintiff from succumbing to the force of environment and becoming insane, but also ample to carry plaintiff over all the obstacles which might offer themselves in the path of a complete and public vindication of plaintiff's entire sanity and competency, not only at present but at the time of plaintiff's said illegal arrest and illegal incarceration in The Society of the New York Hospital. That once said vindication took place said vindication would necessarily have carried in said vindication's train an exposure of the New York Lunacy Laws, and an exposure of the New York method of working said Lunacy Laws, together with an exposure of the methods and aims of New York alleged experts in insanity, New York Medical-Examiners-in-Lunacy. Such an exposure would not be pleasing to said New York Medical-Examiners-in-Lunacy. Such an exposure would in the nature of things, and upon the principle that self-preservation is nature's first law, lead the people of the State of New York, so soon as the people of the State of New York grasped the size and hideous character of the danger that might menace any of them—to wit, life imprisonment in a mad-house cell without notice, with-

out a hearing, without a trial and without recourse, upon the slightest family friction—such an exposure would lead the people of the State of New York to repeal the said illegal lunacy laws now doing duty in the Empire State as the Lambert case (*supra*)—parallel in many particulars with plaintiff's case—had led the people of the State of California to at once—upon Lambert's case becoming known—repeal their Lunacy Laws, modeled, by the way, exactly upon the lines of said present New York Lunacy Laws—as the said Lambert case had led to an *instant* repeal of said California Lunacy Laws. Such an exposure would entail two things poignantly unpleasant to said Medical-Examiners-in-Lunacy. It should be observed here that there are two divisions of New York Medical-Examiners-in-Lunacy. *Division one* represents men like Austin Flint, Senior, who are, so to speak, unattached. Who are free lances in Lunacy, whose oath is—on the evidence—at the disposal of the first purchaser with a sufficiently long purse. Said, so to speak, free lance-in-Lunacy makes a large part of said free lance's annual income from declaring people insane. Readers of the newspapers will note the frequency of said Austin Flint, Senior's, name in Lunacy proceedings, and the rather remarkable fact that said Austin Flint is always opposed to the liberty and sanity of the citizen of either sex who is fighting his or her way out of the clutches of The Society of the New York Hospital or out of the clutches of some other Private Madhouse. *Division two* represents Medical-Examiners-in-Lunacy, like Carlos F. Macdonald, aforesaid, who, while being free lances in Lunacy in the sense that said gentlemen are only too eager to earn an honest penny by swearing a sane man into a mad-house cell for life on a false charge of insanity, as said Macdonald has, on the evidence, done in plaintiff's case—as the following excerpt

from the said deposition of said Macdonald proves, to wit: Page 86 *ibid.* "Deponent further says that his opinions expressed at the time of the second interview hereibefore referred to in April, 1898, have been confirmed, and that the *said Chanler is now, in his opinion, a hopeless paranoiac, his mental disorder being incurable and progressive.*" Said gentlemen also have a *habitat*, by which is meant said gentlemen are also owners or lessees of Private Madhouses. It may not be generally known, that that all dominating, all pervading monopoly the Standard Oil Company has also had its finger in Lunacy, so to speak as follows: A multi-millionaire Director of the said Standard Oil Company was encumbered by an alleged insane wife. We do not go so far as to say that the lady was not, or, if she be still alive, is not now, insane, but we will go so far as to say that were she perfectly sane the following performance upon the part of the said Multi-Millionaire Director in said Standard Oil could have been put through as smoothly—as thoroughly on oiled wheels as it were—as said performance was, on the evidence, smoothly put through. The said performance to wit: Said Standard Oil Director first placed said wife in the tender keeping of said Carlos F. Macdonald at a snug little retreat, said to be leased by said Macdonald from the widow of the late brother of the Honorable Joseph Hodges Choate—the said defunct brother having been said Private Madhouse's Proprietor in said defunct brother's day. Said snug little retreat is situated in the pleasantly named village of Pleasantville, a few miles north of White Plains on the Harlem Railroad. According to the public prints the price paid by said Standard Oil Director for the lodging and maintenance of said lady at the hands of said Carlos F. Macdonald is enough to raise the doubt as to whether or not said exorbitant, preposter-

ous sum—which makes plaintiff's one hundred dollars per week for lodging and maintenance at the said Society of the New York Hospital look utterly insignificant—said price paid said Macdonald by said Director is sufficient to raise the doubt as to whether said fabulous sum is not more in the nature of a ransom than a payment for value received. Said Standard Oil Director next hies him South to a State where money is not plenty. Said Standard Oil Director next sets to work to control the legislature of said Southern State with the sole view of passing through said Legislature a bill *Making insanity a ground for divorce.* The conservative ideas on divorce in the South are well known. The South boasts the only State in the Union which is more orthodox, more Christian, so to speak, than the Founder of Christianity Himself, Who did admit one ground for divorce, said unique Southern State—South Carolina to wit—admitting none. The indignation aroused in the public mind by such a high handed proceeding—and upon the part of a carpet-bagger at that—was outspoken. However, as is often the case, dollars won the day. Whereupon said Standard Oil Director promptly took unto himself a younger mate.

One would think that said Standard Oil Director had sufficiently whetted said Carlos F. Macdonald's interest in having as an inmate of said Macdonald's said snug little retreat at Pleasantville for as indefinite a period as possible a "patient" who represented such a splendid income as did ex-wife of said Standard Oil Magnate. But said Standard Oil Magnate did not stop here—the methods of said Standard Oil Magnate are thorough and far reaching. Said Standard Oil Magnate next and finally, according to the public prints of the day, had proceedings set on foot for a most remarkable piece of work, to-wit. Said Standard Oil Magnate had, according to

said public prints, proceedings set on foot to have said Carlos F. Macdonald appointed the Committee of the person and estate—which was a large one—of said ex-wife. What became of the matter plaintiff knows not, since said matter was swiftly hushed up thereafter and —so far as plaintiff saw—never again appeared in print. Said extraordinary performance, the putting of a party's jailor into the confidential and equitable relation of Committee of said party's person and estate is so gross an infraction of even common prudence as to need no comment. Let us hear what so fair-minded and learned an authority as Blackstone has to say upon practically the same topic to-wit: *"Guardian and Ward."* But with Guardian and Ward this differences arises. That although a ward is of tender years, yet a ward has a mind, yet a ward has intelligence, yet a ward has common sense, which can be called upon by said ward to protect said ward from said guardian, should said guardian fail in said guardian's duty toward said ward. Not so, however, in the case of an insane person. Here the said insane person is utterly helpless, utterly incapable of looking out in the remotest degree for said insane person's rights of person and property. And should the Committee of the person and estate of said insane person be tempted to continue to confine said insane person, after said insane person should have become cured what an entrenched position would said committee occupy for throwing obstacles in the way of said now *sane person's* communicating with the outer world and procuring liberty through *habeas corpus* proceeding. Let us hear what Blackstone has to say upon the subject of putting a ward, *i. e.*, a lunatic into the hands of a Guardian, *i. e.*, a Committee of the person and estate.

"Of Guardian and Ward."

"1. The guardian with us performs the office both of the *tutor* and *curator* of the Roman laws; the former of which had the charge of the maintenance and education of the minor, the latter the care of his fortune; or, according to the language of the Court of Chancery, the *tutor* was the committee of the person, the *curator* the committee of the estate. But this office was frequently united in the civil law; as it is always in our law with regard to minors, though as to lunatics, and idiots it is commonly kept distinct." page 175.

"Next are guardians *in socage* * * * These take place only when the minor is entitled to some estate in lands, and then by the common law the guardianship devolves upon his next of kin, to whom the inheritance cannot possibly descend; as, where the estate descended from his father, in this case his uncle by the mother's side cannot possibly inherit this estate, and therefore shall be the guardian. For the law judges it improper to trust the person of an infant in his hands; who may by possibility become heir to him; that there may be no temptation, nor even suspicion of temptation, for him to abuse his trust. The Roman laws proceed on a quite contrary principle, committing the care of the minor to him who is the next to succeed to the inheritance, presuming that the next heir would take the best care of an estate, to which he has a prospect of succeeding; and this they boast to be *"summa providentia."* But in the meantime they seem to have forgotten how much it is the guardian's interest to remove the incumbrance of his pupil's life from that estate for which he is supposed to have so great a regard. And this affords Fortesque and Sir Edward Coke an ample opportunity for triumph; they affirming that to com-

mit the custody of an infant to him that is next in succession is *"quasi agnum committere lupo, ad devorandum."* pp. 176, 177 and 178.

As we see Blackstone says, "as to lunatics and idiots it (the Committeeship of the person and the Committeeship of the estate) is commonly kept distinct." The reason for this is, of course, obvious. But Blackstone is not the only one opposed to *agnum committere lupo ad devorandum.* Judge Lawrence said in matter of O'Connell, 5 Law Bull. 60 (1883). Motion to appoint a Committee of a lunatic without giving security. Held, doubtful whether Court has power. *"I shall not appoint the keeper of the Asylum as Committee."* While in England the keeper of an Asylum is so squinted at by the law that said keeper is regarded with disfavor even when attempting to ply the trade of a Medical-Examiner-in-Lunacy, as said Carlos Macdonald so plies said trade, to-wit, mounting the stand and passing judgment upon a person's sanity. "The petition (in lunacy) should be supported by affidavits by medical men—*preferably unconnected with lunatic asylums.* (Note 2) *Re Anon.* 1844, Drur. 286. Here Sugden L. C. *refused to receive, in support of an application for an inquisition, a certificate by the keeper of a private lunatic asylum."* Renton, p. 259. What would Blackstone have to say about *"turning over the lamb for the wolf to devour,"* could Blackstone visit once more the scene of his former activities, in the case of * * * into the hands of said Carlos F. Macdonald, keeper of the Private Mad-House at Pleasantville? The motive, therefore, for said Carlos F. Macdonald's said thinly veiled venom against plaintiff in said Proceedings in 1899 is not far to seek. Neither is that of said Macdonald's side-partner, so to speak, in the crime said Macdonald and said Flint perpetrated against plaintiff in—upon the evidence—swear-

ing that plaintiff was hopelessly and increasingly hopelessly insane and incompetent, whereas, on the evidence, said gentlemen were forced to observe that plaintiff was merely a student in Experimental Psychology, who could pretty much at will enter a trance. Said Macdonald and said Flint were well aware of plaintiff's attitude towards Medical-Examiners-in-Lunacy. Plaintiff had said to said gentlemen what plaintiff later wrote under date March 26, 1900, to said first New York lawyer, to-wit, "It is a duel to the death between me and the Society of the New York Hospital and its allied private insane asylums—with which this State is honeycombed—and their allied Medical-Examiners-in-Lunacy, whom I'd prove on the evidence to be a gang of professional perjurers, a gang of "cappers," and "barkers," and "pullers-in" for the private insane asylums with which the Empire State is mined." Said gentlemen very well knew that if plaintiff ever emerged alive from the confines of the Society of the New York Hospital aforesaid that said gentlemen's professional emoluments would—to put it mildly—be largely curtailed. Provided the American people ever wake up to the peril and scandal lurking in their lunacy laws, as the English people did upon the appearance of Charles Reade's epochal and revolutionizing book on lunacy practices, entitled "Very Hard Cash." It was therefore to the pecuniary and professional interest of said Macdonald and Flint to so tie up plaintiff in the fetters of insanity and incompetency by said gentlemen's, on the evidence, false swearing that plaintiff could never get out and show said gentlemen up. With plaintiff at large and in a State where plaintiff could speak freely and write freely without danger of life-imprisonment upon a false charge of insanity Othello's occupation would be gone, for said Medical-Examiners-in-Lunacy; by which we mean that the public would,

once the public grasped the real situation, set metes and bounds to the now tyrannical satrap-like power of life-imprisonment exercised in their calling by New York Medical-Examiners-in-Lunacy.

What would Blackstone, Fortesque and Sir Edward Coke have said to naming as Committee of an alleged lunatic, and his large fortune, the law-partner of one of the proprietors of the mad-house to which said alleged lunatic was consigned for life, on perjured charges, without either notice of the proceedings had against him, or opportunity to appear and be heard in defense of his goods and himself?

Here Sugden, L. C., refused to receive in support of an application for an inquisition a certificate by the keeper of a private lunatic asylum." Renton, p. 259.

What would Sir Wm. Blackstone, Fortesque and Sir Edward Coke, what would these profoundly learned jurists and great men, have to say about *agnum committere lupo, ad devorandum?*

We shall now conclude the discussion of the question as to what constitutes sanity as distinguished from insanity.

1. The documents annexed to plaintiff's affidavit and the documents annexed to this brief will show that we shall prove in this case that plaintiff has always been sane and competent. In *note* in 43 Am. St. Rep. 531, it was said: In a lunacy proceeding the unsoundness of the mind is the essential thing, and must be clearly established as an independent proposition: *In re Shaul,* 40 How. Pr., 204; An inquisition *de lunatico inquirendo* simply makes a *prima facie* case.

We here insert excerpts from *Hutchinson* v. *Sandt,* 26 American Decisions, page 127 (4 Rawle, 234).

"An inquisition finding that a person is and for five years has been of unsound mind, and incapable of manag-

ing his estate, is admissible in evidence as against the grantees of the alleged lunatic, for the purpose of avoiding his deed to them.

"Such inquisition is *prima facie* evidence only, and may be rebutted by the showing that the alleged lunatic was not insane, or that he had lucid intervals, during one of which the deed in question was executed. * * *

EJECTMENT, both parties claiming title under Andrew Hutchinson, deceased; the plaintiffs as his heirs, and the defendant under a deed executed by him in 1817. The plaintiffs, to avoid the effect of this deed, offered in evidence an inquisition taken in February, 1818, under a commission in the nature of a writ DE LUNATICO INQUIRENDO, by which, among other things, it was found 'that the said Andrew Hutchinson, at the time of taking this inquisition, is of unsound mind, memory and capacity, so that he is not capable of governing himself or managing his estate; and that said Andrew Hutchinson hath been in said state of unsound mind, memory and capacity for the space of five years last past and upwards.' In April, 1818, this inquisition was confirmed by the court, and committees of his person and estate appointed:

"The defendants then offered evidence tending to prove that Andrew Hutchinson was not a lunatic; that he was subject to fits only, and had many lucid intervals, etc. * * *

"Under the directions of the judge the jury found for the defendants. Plaintiffs moved for a new trial, which being refused, they appealed to this court. * * *

"By the Court, Kennedy, J.: 'The inquisition had been given in evidence by the plaintiffs to show that Andrew Hutchinson was, at the time the deed of conveyance purported to have been executed by him, to wit,

on the fifteenth of November, 1817, and under which the defendants claimed, of unsound mind and incompetent to make such an instrument. It was doubtless admissible for this purpose, although entirely an *ex parte* proceeding as respected the grantees in the deed, but for this reason of its being *ex parte* it is only *prima facie* evidence at most of Andrew Hutchinson's insanity, and liable to be rebutted and done away by the testimony of those who were acquitted and conversant with him during that period, and knew him to be of sound mind, or that he had at least lucid intervals, and that the deed was executed by him at one of those times. * * *

"The decision of the circuit court, overruling the motion for a new trial, is reversed, the verdict set aside, and a new trial granted."

We next insert excerpts from *Titlow* v. *Titlow*, 93 American Decisions, page 691. (54 Pennsylvania State, 216.)

By Court, Strong, J.: "The general principle is, that an inquisition of lunacy found is *prima facie* evidence in cases involving the sanity of the lunatic, and no more; such is the doctrine of all our cases. * * *

Gangweress Estate, *Id.* 417 (53 Am. Dec. 554). In the latter of these cases it was distinctly ruled that an inquisition of lunacy finding the party a lunatic without lucid intervals was *prima facie* evidence only, and not conclusive, and a petitioner for the proceeding was not *estopped* from asserting the truth against it, and showing that the party had lucid intervals: See also *Hutchinson* v. *Sandt*, 4 Rawle, 234.

Den ex Dem. of Aber v. *Clark*, 18 American Decisions, page 417 (5 Halstead, 217). Ewing, C. J., said:

"In *Sergeson* v. *Sedley*, 2 Atk. 412, Lord Hardwicke overruled the objection and said that 'inquisitions of lunacy are always permitted to be read, but are not conclusive evidence; for you may traverse them if you please. * * *'"

In *ex parte* Barnsley, 3 Atk. 184, Lord Hardwicke said: "In all these inquisitions they are not at all conclusive, for they may bring actions at law, or a bill to set aside conveyances. * * *"

In *Hall* v. *Warren*, 9 Ves. 603, The master of rolls said: "That inquisition having been taken in the absence of the plaintiff is not conclusive upon him. But it is *prima facie* evidence of the lunacy. It is, however, competent to third parties to dispute the fact and to maintain that, notwithstanding the inquisition, the object of it was of sound mind at any period of the time which it covers. * * *"

Maddox, in his treatise on chancery practice, states the following doctrine: "An inquisition is only presumptive evidence of insanity, and not conclusive, so that upon an action in respect to any contract or deed, it is for a jury to determine whether at the time of executing it, the party was *non compos*, though by the inquisition he was found to be *non compos* at such a period": 2 Madd. 578.

FROM THESE CITATIONS THE FOLLOWING CONCLUSIONS ARE DEDUCIBLE:

1. An inquisition of lunacy is not conclusive against any person not a party to it.
2. When an inquisition is admitted in evidence, the

party against whom it is used may introduce proof that the alleged lunatic was of sound mind at any period of the time covered by the inquisition. The position is, indeed, a corollary from the former, as it would be inconsistent to say the inquisition was not conclusive and at the same time to refuse to receive any evidence to contradict the fact stated in it. * * *

In page 301, Phillips speaks of the inquisition of lunacy. He says it is evidence against third persons who were strangers to the proceedings. He does not directly say whether conclusive or *prima facie*, though his meaning cannot readily be misunderstood; but to support his position he cites the case already mentioned of *Sergeson* v. *Scale*, in which Lord Hardwicke says it may be read, but it is not conclusive. * * *

Such is the diversity of judgment respecting the state of the mind, that on this, more than perhaps any other question, error may be anticipated from uncontroverted proofs and *ex parte* examinations.

The Executors of William B. Hill, deceased, v. *Edward Day, et al.*, 34 New Jersey Equity, 150.

Van Vleet, V. C., said: *"Where there is no reason to suspect fraud, the test in this class of cases is, Did the person whose act is challenged possess sufficient mind to understand in a reasonable manner the nature and effect of the act he was doing, or the business he was transacting? He may be old, or enfeebled by disease, or irrational upon some topics, and yet possess sufficient mind to make a valid disposition of his property. In the absence of fraud or imposition, the only question the court is required to decide is, Did the person whose act is challenged clearly understand and comprehend what he was doing when he did it?* * * * These remarks show a good memory, and clear under-

standing and judgment. He remembered what he had done, the motive which had influenced him, and that his judgment approved his conduct until new influences were brought to bear upon it, and then that his judgment underwent a change, and he wanted the mortgage returned to him. * * * His conduct and speech not only show that he knew what he was doing, but that he was capable of exercising ordinary caution and discretion. * * *

"Contemporaneous conduct or demeanor, constituting part of the transaction brought under review, is always entitled to very grave consideration in cases of this kind. It generally portrays much more truthfully what a witness understood, thought, or believed, at the moment than words subsequently spoken, even when they are uttered under the sanction of an oath." * * *

Citing again said note in 43 Am. St. Rep. 531, "If the party charged testifies, his conduct is to be considered by the jury as the conduct of any other witness is considered: *Fiscus* v. *Turner*, 125 Ind. 46. And he has the right to appear and testify before the jury: 7 Abb. N. C. 417."

In *Commonwealth* v. *Haskell*, 2 Brewst., 491, we find the following proposition, viz.: "That insanity is a mental disease, and must indicate a change in the normal condition; *that a change is not, of course, conclusive evidence of insanity, for it may be unattended by any symptoms of disturbance, and may be marked by propriety and moderation; that mere eccentricity or peculiarity is not evidence of insanity where it is shown to be the normal characteristic of the defendant;* that mere weakness of intellect is not of itself sufficient to establish insanity, for it may co-exist with some degree of

power; *that one who alleges the insanity of himself or of another must prove it;* that the presence of insanity is to be detected by comparing the symptoms of the defendant with the standard of health, taking into consideration the habits and peculiarities of the defendant when sane, and looking to the causes producing the change; * * * *that the test in cases of insanity lies in the word "power"*—has the defendant in a criminal case the power to distinguish right from wrong, and the power to adhere to the right and avoid the wrong? —in other cases, has the defendant, in addition to the capacities mentioned, the power to govern his mind, his body and his estate? that the issue in a proceeding of lunacy is, whether the defendant has been so far deprived of his reason and understanding as to be unable to govern himself or to manage his affairs; * * * *that the finding of the original jury upon the petition is not evidence before the jury who try the traverse;* that the commonwealth having first shown that the defendant in a lunacy proceeding was insane before the filing of the petition, may prove his mental condition up to the time of the trial; that it having shown violence of the defendant toward his wife, may ask the witness "What was the conduct of the wife?" and that *it having read in evidence as proof of delusion a letter from the defendant charging others with serious crime, it is competent for the defendant to prove that one of the charges was not a delusion, but a fact.* * * * Statutes requiring a party charged with insanity to be produced in open court, when possible, are designed to prevent fraud in the procuring of verdicts of insanity without affording the defendant an opportunity of being heard: *Fiscus* v. *Turner,* 125 Ind. 46."

Mr. Justice Harlan (in the Runk case, *supra*) thus

defined what constituted sanity as opposed to insanity: "What constitutes insanity, in the sense in which we are using the term, has been described to you, and need not be repeated. *If this man understood the consequences and effects of what he was doing or contemplating, to himself and to others,* if he understood the wrongfulness of it, *as a sane man would, then he was* SANE, so far as we have occasion to consider the subject. * * * I therefore charge you that if he was in a sane condition of mind at the time, as I have described, able to understand the moral character and consequences of his act, his suicide is a defense to this suit. The only question, therefore, for consideration is this question of sanity. There is nothing else in the case." A perusal of the above will prove that the Supreme Court of the United States supports plaintiff's aforesaid contention touching sanity and also touching the test as to whether a party is sane or insane. As said above, Plaintiff maintains that sanity is shown by the action of a party's mind not by the action of a party's muscles. Plaintiff maintains that sanity is shown by the words uttered by a party's tongue rather than by the question as to whether the party's tongue was "coated" or not "coated." Plaintiff maintains that sanity is shown by the question as to whether or not said party's ideas are normal rather than by the question as to whether or not said party's pupils are normal. What is insanity? Suppose a law should be enacted to the effect that certain acts or thoughts would be sufficient proof of mental derangement, and that upon a trial, the facts appearing, the Court should direct a verdict accordingly, and property or freedom should thus be wrested from the defendant. Would such a proceeding constitute due process of law? And yet

such a preposterous, such a mechanical, such a charlatanish test of insanity is today set by so-called experts in insanity, who glean certain physical, mechanical, muscular actions which sometimes follow insanity and —to use a technical phrase—mistaking *auxiliary for positive*—impudently place the cart before the horse.

Lastly, as Renton says in "The Law of and Practice in Lunacy," London, 1896, the old way of proving sanity was finding out whether a man could count, could tell who his parents were and knew his own name, etc. With the increase of the complexity of life this simple test falls behind the times now-a-days, but its principle still holds true, namely that the test of sanity is a mental test wholly within the power of the accused to accomplish and without any witnesses professional or lay to back him up. Suppose two paid experts in insanity, in the pay of the other side swear that the defendant can not tell what his past history has been, that said defendant's mind is a total blank upon that subject. Would that professional and paid and interested oath stand against the defendant's refutation thereof by taking the stand and promptly and lucidly giving his past history, provided he were afforded his legal privilege of taking the stand in place of being kept away from Court and having to allow his liberty and property to be perjured away from him in his enforced absence?

The said decision in the said Runk case proves conclusively that a written instrument—written by the party committing suicide prior but close to said time of said suicide—proves conclusively that said written instrument does successfully offset the *prima facie* presumption of, and *prima facie* evidence of, insanity which said act of suicide entails—suicide being in itself presumptive proof of insanity, its name being *suicidal*

mania—in the category of insanity. In a word, that a written instrument written by an alleged lunatic at the time of said alleged lunacy can and does successfully offset medical evidence of said alleged lunacy. In a word, *that the mind—not the body—is the seat of sanity or insanity, and as the mind acts so is the party proved sane or insane thereby.*

Mr. Justice Harlan says "He (Runk) left for the guidance of his executor a memorandum of his business affairs prepared, just before his death, and which tended to show that he was at that time entirely at himself." We confidently rest upon plaintiff's said letter under date of July 3rd, 1897—of over 30 pages of typewriting —written to plaintiff's then proposed counsel, Hon. Micajah Woods, Commonwealth's Attorney of Albemarle County, Virginia, acknowledged by letter and returned by said Woods in 1900; we confidently rest upon plaintiff's said letter written within four months of the date of plaintiff's said arrest and incarceration in The Society of the New York Hospital at White Plains, we confidently rest thereon together with this brief, written by plaintiff, to prove that not only was plaintiff, in the words of the learned Mr. Justice Harlan, "entirely at himself," at the time of said writing and since, but also, on the evidence contained in said letter, corroborated as aforesaid by third parties—that plaintiff was at himself during the period precedent to plaintiff's said arrest, in which said period the said other side falsely, upon said evidence, allege plaintiff to have been of unsound mind; that *Mr. Justice Harlan describes a sane man* (supra) *as one who "understood the consequences and effects of what he was doing;" said letter of plaintiff under date of July* 3d, 1897, *surely proved that plaintiff "understood the consequences and*

effects of what he was doing" when plaintiff wrote said letter; said plaintiff, when plaintiff wrote said letter, according to Mr. Justice Harlan, at all events, was sane; and the same reasoning holds good touching said brief."

POINT 16. The said proceedings in 1899 were void for the reason that the only evidence of plaintiff's alleged incompetency came from two medical men in the pay of the said petitioners, and from the medical man in charge of the Society of the New York Hospital where plaintiff was confined, and to whose pecuniary interest it was therefore—plaintiff being the highest pay (falsely alleged) "patient" in said hospital—to keep plaintiff in said hospital as long as he could; and said paid for or otherwise pecuniary interested, evidence, standing uncontradicted—for the reason aforesaid that plaintiff was by said contrivance aforesaid kept out of Court and therefore was unable to contradict said evidence—said evidence standing uncontradicted was not a valid foundation for the judgment which followed.

Said evidence being, upon the evidence, under said circumstances ex parte *was therefore of no avail.*

POINT 17. Even if the judgment of the New York State Courts in 1897 and 1899 aforesaid, were not totally null and void for the reasons aforesaid, the said judgments are now *functus officio* for the reason that they have nothing to feed upon, a judgment in insanity self-evidently—since insanity is not always incurable—not being a continuing one, and plaintiff having been found to be both sane and competent, as well as a citizen of Virginia, by the said judgment rendered November 6, 1901, by the said Virginia Court (Plaintiff's Exhibit 7 for identification).

POINT 18. Upon the above grounds of fraud, want of jurisdiction, lack of due process of law, unconstitutionality, illegality, nullity and *functus officio* the said New York proceedings may be attacked collaterally; and T. T. Sherman, the so-called committee of plaintiff's person and estate, who is merely a Trustee *ex maleficio* may be assailed as a trespasser upon plaintiff's property.

POINT 19. Plaintiff being a citizen of Virginia, and the said alleged committee of plaintiff's person and estate being a citizen of New York and doing business in New York City, and the amount in controversy being over three thousand dollars, the Federal Circuit Court for the Southern District of New York has jurisdiction.

(In conclusion, if the Court please, let us now hear Blackstone thunder from the Common law—that unsurpassed body of law, which is the law of the United States save Louisiana, under the Code Napoleon.)

THE ABSOLUTE RIGHTS OF THE INDIVIDUAL.

(*From Brief in Chaloner against Sherman, pp.* 845-847.)

(1) "For the principal aim of society is to protect individuals in the enjoyment of those absolute rights, which were vested in them by the immutable laws of nature; but which could not be preserved in peace without that mutual assistance and intercourse which is gained by the institution of friendly and social communities. Hence it follows, that the first and primary end of human laws is to maintain and regulate these *absolute* rights of individuals. Such rights are social and *relative* result from, and are posterior to, the formation of states and societies, so that to maintain and regulate these, is clearly a subsequent consideration.

And therefore the principal view of human laws is, or ought always to be, to explain, protect and enforce such rights as are absolute, which in themselves are few and simple; and then such rights as are relative, which, arising from a variety of connections, will be far more numerous and more complicated. These will take up a greater space in any code of laws, and hence may appear to be more intended to, though in reality they are not, than the rights of the former kind," pages 63 and 64.

(2) "To bereave a man of life, *or by violence to confiscate his estate, without accusation or trial, would be so gross and notorious an act of despotism,* as must at once convey the alarm of tyranny throughout the whole kingdom; but *confinement of the person, by secretly hurrying him to gaol, where his sufferings are unknown or forgotten, is a less public, a less striking, and, therefore, a more dangerous engine of arbitrary government*" * * * (p. 75).

(3) * * * "In vain may it be urged that the good of the individual ought to yield to that of the community; for it would be dangerous to allow any private man, or even any public tribunal, to be the judge of this common good, and to decide whether it be expedient or no. *Besides, the public good is nothing more essentially interested than in the protection of every individual's private right as modeled by the municipal law*" (p. 78).

(4) * * * "In these several articles consist the rights, or, they are frequently termed, the liberties of Englishmen; liberties more generally talked of, than thoroughly understood; and yet highly necessary to be perfectly known and considered by every man of rank and property, lest his ignorance of the points whereon they are founded should hurry him into faction and licentiousness on the one hand, or a pusillanimous indiffer-

ence and criminal submission on the other. And we have seen that these rights consist, primarily, in the free enjoyment of personal security, of personal liberty and of private property. So long as these remain inviolate, the subject is perfectly free; for every species of compulsive tyranny and oppression must act in opposition to one or other of these rights, having no other object upon which it can possibly be employed" (p. 84).

(5) * * * "And hence it is that our lawyers are with justice so copious in their encomiums on *the reason of the common law;* that they tell us, *that the law is the perfection of reason,* that it *always intends to conform thereto, and that what is not reason is not law.* Not that the particular reason of every rule in the law can at this distance of time be always precisely assigned; but *it is sufficient that there be nothing in the rule flatly contradictory to reason,* and then the law will presume it to be well founded" * * * (p. 36).

(6) * * * "When a custom is actually proved to exist, the next inquiry is into the legality of it; for, if it is not a good custom, it ought to be no longer used; *malus usus abolendus est** is an established maxim of the law" * * * (p. 43).

We said above, "arresting and imprisoning a law-abiding member of the legal profession * * * for no other crime than that of entering a harmless trance at the request of *pseudo*-scientists who pretended an interest therein." We were in error. There was one other

*As a law-writer we respectfully submit that against the illegal custom of imprisoning alleged lunatics for life, and sequestrating their estates, sans notice, sans opportunity to appear and be heard, and sans the privilege extended alleged burglars and rapists, to-wit: trial, *not in absentia, not* twenty-five miles off—*not* twenty-five miles out of sight of the jury—but *in their presence in open court,* or, in extreme cases, in their presence *in camera*—as a law-writer we respectfully submit, that against said scandalous custom, aforesaid, should—and without delay—be trained Blackstone's maxim: "*malus usus abolendus est.*"

crime—for which plaintiff was arrested and imprisoned for life by the Supreme Court of New York—that of being a vegetarian. A juror: "Q. I notice in the certificate (of lunacy in the proceedings of 1897), that he only took certain articles of food about two years ago, restricting himself to diet: does he still do that? A. (By Dr. S. B. Lyon): He still continues vegetable diet. I am not aware that he has eaten any meat since he was with us" (p. 14, Proceedings, 1899) (Transcript of Record, pp. 230-231).

BRIEF-IN-REBUTTAL

As we will not have an opportunity to peruse the brief to be filed by counsel for the defendant-in-error in the Supreme Court, before this brief is printed, and as we assume that the contents of the brief of said counsel will be much the same as the contents of his brief before the Circuit Court of Appeals, we will now take up the salient points of his brief before the latter court and reply to the same:

We respectfully submit to this learned Court that the length of this brief is caused by the act of the counsel for the defendant-in-error. By act we intend to imply mental—not physical—act.

The learned counsel for the defendant-in-error in said brief makes a statement which is wholly unwarranted by the facts. He says, p. 13 of said brief: "The only offer on this score is the offer to prove the plaintiff-in-error's physical disability at the time," (and on p. 14, *ibid.*): "The plain fact is of course that one who is physically unable to attend a trial is by no means denied an opportunity to be heard if he is able to retain and consult freely with counsel. The fact that the plaintiff-in-error in this case was entirely at liberty to retain and consult with counsel appears not only from the fact that he wrote long and full letters to at least one of his counsel (fol. 112, Letter printed as Exhibit 6 for Identification, fols. 305-340), but also from the testimony in the 1899 Proceedings (fol. 232), which shows that at the time in question he was on parole and at liberty to go where he pleased within large limits (fol. 231)."

Whereas the deposition he cites proves beyond a per-

adventure that the plaintiff-in-error was at said time confined to his bed with spinal trouble. And, after an attempt to walk, was forced to return to his bed, and stay there for weeks. We respectfully submit that the counsel for the defendant-in-error has garbled and twisted the deposition of the plaintiff-in-error, which deals with the above period, and conveniently *shifted the facts forward* for some nine months—from the *Spring of* 1899 *to January,* 1900—in order to deceive the learned Federal Circuit Court of Appeals, and thereby buttress his utterly unwarranted hypothesis, that the plaintiff-in-error—instead of being physically incapacitated from walking at all—to say nothing of walking twelve miles in three hours—which the deposition proves he did in—and steadily—after January, 1900, up to the time of his escape in November, 1900—and thereby buttress and bolster up the counsel for the defendant-in-error's utterly unwarranted hypothesis that the plaintiff-in-error was, at the time of the 1899 Proceedings—before a Commission-In-Lunacy and a Sheriff's Jury held in New York City—in vigorous physical health, walking all over the country and meeting and consulting with counsel to his heart's content. The following excerpt from said 1899 Proceedings, being the testimony on the stand of the other side's own witness, namely, Dr. Samuel B. Lyon, Medical Superintendent of "Bloomingdale," utterly disproves the aforesaid allegation by said learned counsel for defendant-in-error, for same shows plaintiff-in-error confined to his bed at the time of said 1899 Proceedings and for some three weeks prior thereto. The statement of said learned counsel for defendant-in-error—to wit—"at the time in question he was on parole and at liberty to go where he pleased within large limits," dwindles down to the pitiful fact that plaintiff-in-error—although at liberty on

parole, to go where he pleased within large limits, was *physically incapacitated by inability to avail himself of said liberty.* Said excerpt to wit. Transcript of Record, p. 114, fol. 225, *supra.*

Q. "When did you last see John Armstrong Chaloner?

A. Last Wednesday or Thursday, about three days ago.

Q. Did you see him in regard to attending before this Commission and Jury, today?

A. Yes, sir; I knew this case was approaching and I visited him and asked him what he wanted to do in regard to it; whatever he wanted to do I wanted to carry out. I asked him if he wanted to be present here; he said he was physically unable to be present on account of pain in his spine * * * (p. 115, fol. 225). A little subsequently to that I received a request from him to come over again.

Q. In what place?

A. To his room. He did not wish me to represent him, but I should come in his place or say that he could not come on account of his infirmity * * *.

A. * * * He did not feel as if he could stand up, he has kept his bed for over three weeks at least. (p. 115, fol. 226).

BY A JUROR:

Q. Has he ever made any attempt to escape?

A. No, he has no desire to escape—he has made no attempt to escape. I granted him the privilege of all the grounds—I gave him the parole of our grounds on his honor—he is a very honorable man, he went out by himself an hour or so—and then he ceased to go out because he was physically unable."

We respectfully submit that the said record bears out our allegation, and upsets that of the learned counsel for defendant-in-error.

The latter's aforesaid allegation *in re* plaintiff-in-error's being entirely at liberty to "retain and consult with counsel" is as false as the aforesaid allegation picturing plaintiff-in-error as roaming the country within large limits. While the truth is he was flat on his back. The same regarding the "long and full letters," as said learned counsel for defendant-in-error falsely accuses plaintiff-in-error of writing. We shall presently prove said charges against the veracity and good faith of said learned counsel for defendant-in-error to the hilt in this brief-in-rebuttal. Also we shall show that plaintiff-in-error kept to his parole—though a bogus parole given under duress—for seventeen months of torment. And only escaped when he found that no lawyer from New York or elsewhere had the courage to bring *habeas corpus* Proceedings.

We now come, we respectfully submit, to the cause of the length of this Brief. The aforesaid cause is many-sided.

First. When in 1907 plaintiff-in-error published his law book entitled "The Lunacy Law of the World" some four hundred pages in length, treating of the Law on Lunacy in each of the forty-eight States and Territories of the United States, as well as those of the Six Great Powers of Europe, to-wit: Great Britain, France, Italy, Russia, Germany, and Austria-Hungary; six leading Law Reviews spoke in encouraging terms thereof, and even went so far as to say that the changes suggested by plaintiff-in-error should be enacted into law by the Legislatures of the various States or Territories whose Laws on Lunacy left something to be desired. The following is a list of the aforesaid Law Reviews with a few lines

of criticism from each—the main bulk being found indexed later on in this volume of the Brief:

The Northeastern Reporter, The Ohio Law Bulletin, The Oklahoma Law Journal, The Lancaster Law Review, Law Notes.

The Northeastern Reporter says: "St. Paul, Minn., July, 1907. It is an examination of the laws of each of the States and Territories, and of the Six Great Powers of Europe, on the subject, and is in terms a very severe arraignment of most of them. *It would appear that the iniquitous system against which Charles Reade waged war has by no means disappeared.* People may still be incarcerated in Insane Asylums *without notice*, and *without an opportunity to be heard*, either in person or by attorney * * * Mr. Chaloner holds a brief for the accused, and *puts his case very strongly, but, in view of the cases he cites, it would be impossible to state the matter too strongly* * * * The book should awaken *public interest* in an important matter."

The Ohio Law Bulletin says: "Norwalk, Ohio, July 29, 1907. Chaloner, Lunacy Law of the World. A criticism of the practice of adjudging persons incompetent and depriving them of their liberties *without due process* of law, *fortified by decisions of the courts*, is the theme upon which the author has developed *this interesting and instructive work* * * * The author makes it *conclusively appear* that there is *needed revision* of these laws."

The Oklahoma Law Journal says: "Guthrie, Oklahoma, September, 1907. When the contents are carefully read and reflected upon, it is found *one of the best and most needed books that has appeared for many years.* The subject of Lunacy Law in spite of all the legislation we have had in other departments, *has received little at-*

tention. In fact, it is little better than when Charles Reade wrote his book entitled 'Hard Cash,' * * * *There is much in Mr. Chaloner's book that should be well studied by every lawyer and legislator as to what should be done to secure the constitutional rights of every one alleged to be of unsound mind.* The book carefully goes over the Law of Lunacy in the forty-five States and Territories as well as that of the leading Nations of Europe."

The Lancaster Law Review says: "Lancaster, Pa., September 30, 1907. To those of us who have been accustomed to look with complacency on our Lunacy Laws, remembering how lunatics were thrown into dungeons and chained and tortured but a short time ago, *this book brings home some startling truths.* It shows clearly the dangers of that class of legislation in force in England and many of our States (as our own Act of April 20, 1869, P. L., 78), which permits an alleged lunatic to be incarcerated *upon the certificate of 'two or more reputable physicians.'*

The author contends that in Lunacy Proceedings, *notice to the alleged lunatic ought to be absolutely essential* and that the trial should be by jury in the presence of the alleged lunatic; that any other practice is a violation of his constitutional rights and dangerous, in that it might be used by designing relatives for fraudulent purposes. The importance of a jury trial in such cases has been recognized by Judge Brewster in *Com. ex rel* v. *Kirkbride,* 2 Brewster, 402. The writ of *habeas corpus* is not a sufficient *safeguard. The subject is an important and interesting one, and the book shows extensive and careful research. It is forcefully written and carries conviction."*

Law Notes says: "Northport, New York, September, 1907. *The exhaustiveness of his research into the ques-*

tion compels admiration, an author who can work through the Lunacy Law from the time of the Emperor Conrad down to the present."

We respectfully submit that with such a serried array of powerful approval of our view-point, regarding the crying need for a reform of the shameful, the scandalous—the fiendish abuses perpetrated under the name of Lunacy Law—it behooved us to search the tortuous depths of the other side—regarding garbling our intentions, aims and utterances—so profoundly, so thoroughly and so *minutely,* that not so much as one stone in their felonious edifice should be left upon another.

Another reason for the length of this Brief is that the case of *Chaloner against Sherman* is the only case on record, we respectfully submit, in our experience in Lunacy Law, which covers all and sundry the vicious spots, the *crooked, crafty and criminal crannies,* studiously exploited by lawyers who are known in professional circles in New York as "Lunacy Lawyers." By which is meant lawyers in general practice in the metropolis, but who are personally or through a partner or partners in their firms, financially and professionally interested in legislation at Albany—in "steering" legislation at Albany so that the Lunacy Laws shall be as outwardly humane, just and constitutional as—at a cursory glance—but cursory glance *only*—appear to be the Lunacy Laws of the State of New York of 1896—while in reality same are the height—or rather the depth—of *infamy*—the *cloaca maxima*—the public sewer of injustice, wrong, felonious craft and unconstitutionality. The firm of Evarts, Choate and Sherman's most illustrious member, whose name appears to this day as counsel on the firm letter paper of said firm, was at the time of plaintiff-in-error's illegal incarceration in "Bloom-

ingdale" a member of the Board of Governors of that Institution. Therefore plaintiff-in-error was opposed by interests from within and interests from without in the infamy which was practiced against his liberty and constitutional rights.

The avaricious interests of the Chanler family lusting after his gold *put* plaintiff-in-error in "Bloomingdale;" the avaricious interests of said law firm of Evarts, Choate and Sherman *kept*—through one of its members, the late Prescott Hall Butler, the predecessor of Thomas T. Sherman—of Evarts, Choate and Sherman—as Committee of the person and property of plaintiff-in-error —*falsely alleged* "Committee"—*kept* plaintiff-in-error *in* "Bloomingdale."

Another reason for the length of this Brief is that since plaintiff-in-error was thrown into "Bloomingdale" he, strangely enough—we respectfully submit—developed rather unusual literary powers theretofore utterly beyond his reach, so much so that an ordinary letter with any literary flavour was beyond him. So diligently has plaintiff-in-error worked this aforesaid literary vein, discovered one year after his aforesaid incarceration in "Bloomingdale" that while there he wrote several hundred sonnets, many of which have since been published in book form and obtained high praise from critics all over the United States, as well as the "Academy" of London. In the past ten years plaintiff-in-error has written a more or less satirical—but viridic—history concerning what is known as the "Four Hundred" of New York—or at least the *creme de la creme* thereof—as represented by the avenues of Law, Finance and Society. This book has received most extraordinary praise from the three or four papers, North and South, which had the courage to review same. Said history is entitled *"Four Years Behind the Bars of 'Bloomingdale', or The*

Bankruptcy of Law in New York." The said criticisms are found *in extenso*, or abbreviated, in appendix to this brief, a separate volume indexed as follows: To-wit: "*Criticisms of Four Years Behind the Bars of 'Bloomingdale,' By Evan R. Chesterman, in Richmond, Va., 'Evening Journal,'*" p. 190-197; "*Criticism of Four Years Behind the Bars of 'Bloomingdale' from the New York 'World.'*" p. 198; "*Criticism of Four Years Behind the Bars of 'Bloomingdale,' from the Raleigh, N. C., 'News and Observer,'*" pp. 198-199.

During said ten years plaintiff-in-error has written some ten books in prose or in verse; all of which—without a solitary exception—have received most unusual praise from critics the country through. No attempt has been made to sell said books as yet, for the reason that plaintiff-in-error lacks the means to advertise said books until he should regain his large property. But totally irrespective of any pecuniary remuneration plaintiff-in-error steadily worked at his so to speak—new trade—for the past ten years turning out—not actually, but on an average—a book a year, all and sundry of which were most favourably received. In all of said books plaintiff-in-error has taken the stand that once a man has put his hand to the plough he should not turn back. Since nineteen fourteen plaintiff-in-error has developed his literary turn into play-writing; and written five plays—one in prose, four in dramatic blank verse. The title of the prose play is "*Robbery Under Law, or the Battle of the Millionaires.*" This play has made—we respectfully submit—a decided stir in newspaper circles—as the fifty pages, more or less, of newspaper criticism thereof indicate—said book—as all other of plaintiff-in-error's books—is in evidence.

In conclusion. Another reason for the length of this Brief—and by far the most important concerning this

learned Court's reaching a decision—*is the startling fact that the learned counsel for defendant-in-error has not hesitated to stoop to the depths of misstating the Record —in so far as in him lay—by misstating same in the most scandalous fashion.* This deplorable aspect of this extraordinary case is gone into fully in plaintiff-in-error's Brief-in-Rebuttal. So we shall not further dwell upon this lamentable proof of the degeneracy and degradation of the New York Bar by the acts—the red-handed *in flagrante delictu* acts—of a lawyer, who, we understand on the highest authority, is Chairman of the Investigating Committee of the Bar Association of the City of New York, for the investigation of the ethical records of lawyers brought to the notice of the said Bar Association for disbarment. We shall simply say that an erroneous statement may take up but five lines, whereas the Truth—to refute said statement—may require scores of pages. To take but two examples, *First:* the learned counsel for defendant-in-error does not hesitate to traduce the Virginia Proceedings of November 6th, 1901—finding plaintiff-in-error sane and competent—as being "Collusive and void"—see *Chanler* v. *Sherman*, 162 Fed. Rep., 19, *supra*. The learned Court said: "The defendant joins issue upon the fact of sanity after the New York orders were made and also sets up that the Virginia decree was obtained by collusion and is void." To offset said false aspersion upon the act of a Court of a Sovereign State of the United States required the insertion *en bloc* of the 13 printed pages of testimony of said Micajah Woods at the 1908 deposition concerning the regularity of said Virginia Proceedings—said Micajah Woods at the time of his testimony being President of the Virginia State Bar Association, and conceded—on the record—to be an expert by said Joseph H. Choate, Jr. Although this was

not the only reason said thirteen pages of testimony were inserted, as is fully set forth where same appear in Brief-in-Rebuttal.

Second: On page 3 of defendant-in-error's brief appears the following monstrous misstatement. To-wit: "At the trial plaintiff-in-error * * * sought * * * to introduce masses of evidence which were excluded as *having no tendency* to show * * * that the proceedings were tainted with fraud."

When this learned Court reaches the above in said Brief-in-Rebuttal the *twenty-odd pages* of the Record there referred to — between *plaintiff-in-error's trial counsel*—in the trial before the learned Judge Holt in February, 1912—and the said learned judge —regarding his admission of evidence—prove that *not once* in the whole course of said three days' trial did the learned Judge animadvert upon the value of the evidence adduced by plaintiff-in-error—as said learned counsel for defendant-in-error erroneously states above. The learned Judge excluded plaintiff-in-error's evidence purely and solely on the ground that the learned Judge *would not* hear any evidence on the subject upon which evidence was excluded. Here once more it required over twenty solid pages of the Record to refute a false statement of only three lines.

When one considers that all the hostile material testimony of the three petitioners, said Winthrop Astor Chanler, Lewis Stuyvesant Chanler, and Arthur Astor Carey, is false; as well as *all* hostile material testimony of Doctors Moses A. Starr, Austin Flint, Sr., Carlos F. Macdonald, and Samuel B. Lyon; and when one considers—as has been abundantly shown—in the case of the learned counsel for defendant-in-error's erroneous statements above—that it requires twenty pages of truth to overwhelm a three-line lie—the cause for the extra-

ordinary, unprecedented, unheard-of length of this brief is—we respectfully submit—not far to seek.

Finally, the last and most compelling reason for the length of this brief is that plaintiff-in-error in 1897 ob[illegible]ted himself by the force of what used to be known [illegible] "Hannibal oath"* in 1897 to spend every dollar of his income—not capital—if necessary—and to spend every year of his life necessary to the achievement of his one aim and end in life, to wit, the reformation of the Lunacy Laws throughout some 40 per cent of the States of the Union, so that a man or woman shall have as fair, open and above-board a trial if accused of insanity, as now every man and woman is assured when accused of an infamous crime.

Before going into the law or the facts of this extraordinary case, it is necessary to observe, we respectfully submit, that Lord Byron's famous dictum: "Truth is stranger than fiction"—is more than sustained by the lurid pages of the following cold statement of law, as practiced in the twentieth century, in the Metropolis of the United States. We are far from overstating the case, we respectfully submit, when we venture to hazard the remark that this learned and experienced Court will be nothing short of amazed—not to say astonished—at the iniquity enthroned in the seats of the mighty, in this age so boastful of its superior civilization, superior culture, superior knowledge—not to say superior virtue. We shall at once proceed to sustain the above indictment.

In the first place the entire case of the defendant-in-error is founded—on the evidence—upon a brazenly admitted crime. The entire foundation of the case of the defendant-in-error is—*on the Record*—rooted in felony

*Indexed Appendix as follows: "Hannibal Oath of plaintiff-in-error re reform of Lunacy Laws, 640-642."

and—*on the Record*—brazenly so admitted by him. In a word the Public Prosecutor has been—*on the Record*—cheated of a group of gentlemen to send to Sing Sing or Atlanta—to State or Federal Penitentiary by the—for them—happy accident of the stepping in of the Statute of Limitations. For instance, all of the witnesses against the plaintiff-in-error are, *on the Record*, either confessed and admitted—*on their own Record*—perjurers, or so proved by subsequent events. In a deposition *de bene esse* had by Winthrop Astor Chanler, Chief Petitioner in the 1897 Lunacy Proceedings—brother of the plaintiff-in-error—in 1905—this gentleman confessed—*on the Record*—upon cross-examination, that he had committed perjury—by admitting that he had sworn to falsely alleged acts and words put into the mouth of the plaintiff-in-error by himself and—*on the Record*—his fellow conspirators in the Petition to the New York Supreme Court for having the plaintiff-in-error sequestered, and his estate sequestrated upon—*on the Record*—an utterly unfounded, and malicious, and mercenary charge of insanity. Unfortunately, owing to unpropitious circumstances, the plaintiff-in-error was—in spite of almost Herculean efforts upon his part—by circumstances utterly beyond his control—estopped from bringing the matter to the attention of the District Attorney—State or Federal—in New York before the Statute of Limitations stepped in. In like fashion the only two other lay witnesses* to the falsely alleged insanity of the plaintiff-in-error were—*upon the Record*—proved on the evidence of Mr. Winthrop Astor Chanler to be perjurers.

Coming now to the medical experts in the case. One was such merely in name—being a most distinguished

*The two other Petitioners—Ex-Lieutenant-Governor of New York, Lewis Stuyvesant Chanler, and Arthur Astor Carey.

practitioner in surgery, but—on the evidence—utterly at sea when it came to Psychiatry. His brother Statutory-Medical-Examiner-In-Lunacy, Dr. Moses A. Starr, was not lacking in technical knowledge of the evasive Science of Lunacy, but was—*on the Record*—shockingly so when it came to a question of morality. This member of the Profession of Esculapius, in place of assiduously seeking to alleviate pain, care, anxiety in the human race, did—*on the Record*—his very best to increase the burden of the same—*and for life*—in the case of the plaintiff-in-error, and the same may be said of Dr. Austin Flint, Sr., and Carlos F. Macdonald.

We next come to the *creme de la creme* of New York City's proudest names. Here indeed the mind becomes palsied with horror at the—*on the Record*—spectacle of bloody-minded hypocrisy; cruel, relentless, mercenary lust for filthy lucre; Satanic schemes for entrapping sane and innocent men and women of station and wealth in order to bury them alive in the bowels of their modern Bastile—masquerading under the name of an Asylum. The leaders of Society, Finance, Law, Medicine, and—we had almost said—Religion, are—*on the Record*—found cheek by jowl and heads together, in secret conspiracy against the persons and property, of not only citizens of the "Empire State," but strangers within her gates. The spectacle—*on the Record*—afforded by this prostitution of fine minds, in their—*on the Record*—degraded, depraved and thoroughly degenerate mad rush for ill-gotten wealth, is no more saddening than appalling, when one pauses for a moment to weigh its import as a sign of the alleged civilization of the present day, and whither and to what ends said alleged civilization tends.

Finally, let us respectfully glance at the Bench. This mighty engine—which comes nearer than even the Pul-

pit to representing the Supreme Being at work amidst the haunts and amidst the turmoil of the passions of men—is—we regret to respectfully observe—proved—*on the Record*—in but too many instances *metamorphosed into a machine for achieving a criminal purpose*—we do not say wittingly. In place of being the Holder of the Scales of Justice between Vice and Virtue, the Court—*on the Record*—apparently—we do not say wittingly—sides with Vice against Virtue, and becomes—*on the Record*—indisputably and unequivocally—we do not say wittingly—the champion of a Lie, as opposed to Truth. This side of this sinister and repellant law suit, being no less painful for us as an officer of the Court to state, than for this exalted Court to listen to, shall be touched upon no more.

Turning now to the—so to speak—subsidiary parties and—*on the Record*—allied members, in this—*on the Record*—spectacular conspiracy—staged upon the august boards of a Court of Law. The havoc wrought by the—*on the Record*—corrupting dollar, and the even more corrupting pursuit of the same, is second—*if* second—only to that following in the wake of the—*on the Record*—principal plotters in this modern tragedy. First we have alienists, whose business—*on the Record*—is one of pronouncing sane men and sane women insane for a handsome *honorarium*, in the teeth of the dictates of conscience, and the indications of the facts in the case of the falsely alleged incompetents—to say nothing of the dictates of the noble and philanthropic profession of Medicine. Astounding—almost incredible—as it sounds to the ears of those unfamiliar with the seamy side of life in high places—in wealthy and populous cities in the United States—there exists in such cities today—and their number is steadily on the increase—a Secret Society more pernicious and deadly

than any secret society the sun has ever shone on—not even excepting the Thugs of India. *These human head-hunters are as devoid of the very first instincts of humanity as head-hunters from the Malay Archipelago—as a Dyak from Borneo or Celibes—out for heads,* and *heads only.* These depraved and abandoned wretches have the outward bearing and manners of gentlemen of the highest refinement, and deep learning—to say nothing of an air of false geniality and cordiality, profoundly calculated to lure the innocent and unsuspecting victim to his or her undoing. While in reality no murderer who ever cut his victim's throat at dead of night and from ear to ear was ever freer from anything in the least degree resembling pity, sympathy, or even the ordinary conventional makeshifts for conscientious scruples. *These felons in fact—but not in law—today flourish, for the reason that the laws in forty per cent of the States of the United States are made in their favor, and in order that they may ply their trade undetected and undisturbed by the knock of the detective or the police officer.* This does not mean that the makers of the said abominable, unconstitutional and illegal laws are individually guilty in all cases; because said laws are so wrapped up in specious phrases, and apparently—but apparently only—wholesome safeguards, looking towards safeguarding the liberties of the individual—that the lay mind is at once—and almost invariably—baffled by the chicanery of the legal mind, or minds, craftily drafting said traps and pitfalls masquerading as law.

Next we have lawyers who—*on the Record*—act as go-betweens between the alienists and their victims. By which is meant lawyers learned in the dark and mysterious Laws of Lunacy; and interested—personally and professionally—in keeping said laws in precisely that

condition. These men are frequently personally and financially interested in some one or more Private Insane Asylum, as members of the so-called "Board of Governors," or whatever the high-sounding and deceptive title may be. Their business is to see to it that the laws made at Albany and elsewhere are made in their favor, and emphatically against that of the male or female citizen of wealth—sometimes without wealth—when an even more sinister motive than avarice or malice actuates the gentlemen who control Lunacy Legislation in some forty per cent of the States of the Union.

Lastly we have the Professional Heads of Private Insane Asylums—men so scorchingly handled by Charles Reade in his epoch-making novel "Hard Cash," which revolutionized the treatment of the insane in Great Britain fifty years ago—the powerful preface of which is found on page 137 at the rear of plaintiff-in-error's dramatic work entitled "Robbery Under Law" in evidence with the rest of the literary work of plaintiff-in-error during the past ten years—that we shall not attempt the task.

Of which we now give a five-line extract—p. 143, "Robbery Under Law"—as follows: *"The fact would appear to be that under existing arrangements any English man or woman may, without much difficulty, be incarcerated in a Private Lunatic Asylum, when not deprived of reason. If actually deprived of reason when first confined, patients may be retained in duress, when their cure is perfected, and they ought to be released.*

CHARLES READE.

Magdelen College, Oxford,
October 23, 1863."

As a member of the legal profession, we shrink from

lifting the veil hanging over this sombre and repellant case. But the cause in which we have been embarked for twenty years, demands a relentless and frank exposure of wrong-doing by whomever done.

In closing this section, one other point should be touched upon, which point will go far towards emphasizing the dire need for plaintiff-in-error to leave no stone unturned in putting this learned Court in possession of the essential facts, to-wit. Should this learned Court reverse the opinions—in *Windsor* v. *McVeigh, Simon* v. *Craft, and United States against Throckmorton,* all *United States Supreme Court cases*—holding that notice and opportunity to appear and be heard are necessary for a Court to obtain jurisdiction over a party or a party's property, and holding that a decision may be set aside where it can be shown that the defendant did not have his day in Court—where facts were withheld from the Court, where the defendant's whole case was not heard in consequence, where the defendant was not notified of the Proceedings in Court, or was kept away from Court, and where, consequently, there was no real trial—should this learned Court reverse the said three opinions—all of which are cited practically *in extenso* further on in this Brief—*then, in that event, plaintiff will receive a sentence practically of life deprivation of his property and curtailment of his liberties, to-wit, confinement to Virginia and North Carolina, from this learned Court for the following reason.* Nothing, we respectfully submit, should or could induce plaintiff-in-error to again submit to the humiliation of again having the question of his sanity entered into. We respectfully submit that not only reasons of self-respect prohibit such a course, but also plaintiff-in-error's duty to his legatees the Universities of Virginia and North Carolina, to whom years ago he deeded the *corpus* of his entire estate in fee

—valued at a million or more dollars. Said deed, we respectfully submit, is protected for all time by the Virginia decision of November 6, 1901, declaring plaintiff-in-error sane and competent—See 162 Fed. Rep., 19, *supra: "The Constitution of the United States vests in its judicial department jurisdiction over controversies between citizens of different States. The Petitioner as a citizen of the State of Virginia in bringing his said suit in the Circuit Court* of the United States, was availing himself of a right founded upon this constitutional provision. And he came into that Court with a decree of the Court of the State of which he was a citizen, declaring his sanity. We cannot disregard that decree,"* supported by the North Carolina decision of 1905, recognizing the validity of said Virginia decree and permitting plaintiff-in-error to bring suit aganst defendant-in-error in said State in *John Armstrong Chaloner* v. *The United Industrial Company—which suit* plaintiff-in-error won, *infra.*

Furthermore, were plaintiff-in-error ill advised enough to permit the question of his sanity to be once more reopened, that act would instantly jeopardize the aforesaid Virginia decree, now fifteen years old, and under whose aegis plaintiff-in-error has been enabled to bring suit in the entire line of Federal Courts of New York up to the Supreme Court of the United States.

Lunacy Proceedings, we respectfully submit, are of all Court proceedings the most uncertain and doubtful. For Lunacy Proceedings depend for their decision upon the mere opinion of Court, Commission, or Jury, as the case may be. It is not as in ordinary cases where specific acts are *known* to have been committed, specific statements made in the well known and fully charted realm of business, or other normal affairs of life—whether rep-

*Since been changed to the District Court.

utable or disreputable—whether innocent or criminal. Whereas in Lunacy Proceedings the matter is startlingly different. Here we enter a realm in which Court and Jury are wholly at sea—wholly inexperienced from lack of familiarity with insane subjects and their ways—as well as the Literature on Insanity and its theories. Therefore Court and Jury are far from feeling that confidence in rendering a decision which follows Court and Jury, in the aforesaid normal affairs of life. Therefore, the opinions of hostile experts in insanity may entirely sway both Court and Jury in the very best of faith upon the part of Court and Jury—but far—very far—from the best of faith upon the part of these knights of the post—these Medical men—who gain their living by false-swearing—as this Brief will amply prove has been the case with every solitary Medical man who has testified against the sanity and competency of plaintiff-in-error. Therefore in the teeth of the long chain of unbroken evidence of sanity of plaintiff-in-error and of his competency, stretching over a period of fifty years, from his childhood up, plaintiff-in-error might possibly—we do not say probably—but might possibly be found today insane and incompetent by a New York Judge and New York jury, who *believed* what New York experts in Lunacy have audaciously—and falsely as audaciously—brazenly and feloniously sworn to, against the good name and fame of plaintiff-in-error.

This world has been well described upon one occasion as a "Vale of Tears." Such being the case tragedies innocently occur. No greater tragedy can be imagined than a miscarriage of justice. But when the miscarriage of justice is discovered to be a skilfully engineered scheme for the financial betterment of the conspirators and their legal advisers in defiance of Law—in defiance of Equity—and *above all*—in defiance of the facts and

the Truth—it becomes no longer an innocent miscarriage of Justice, but a *criminal* miscarriage—the result of criminal malpractice upon the part of learned but unprincipled counsel working through equally unscrupulous clients. *When it is seen that the Court has been deceived and lied to in the most scandalous and brazen fashion, when it is seen that client and counsel have not hesitated to turn truth into a lie on the slightest opportunity, and—between them—so throw dust into the eyes of a long line of Courts—both State and Federal—for a long term of years—nearly twenty years—that a lie has been enabled for twenty years to trample upon the Truth—and advance to the very portals of the Supreme Court of the United States—in all the pomp, panoply and circumstance of Justice herself—when this startlingly malodorous state of affairs* is grasped by this learned and upright Court—we respectfully submit that this learned and upright Court will be inclined to raise its hands to Heaven and murmur O tempora! O mores!

The above criminal charges have been made by us for nearly twenty years. We have made no secret thereof. What do the other side do? Do they bring criminal proceedings against us in the States of Virginia and North Carolina, where the Courts, years ago, found the plaintiff-in-error sane and competent—do they sue for Criminal libel on account of the words both printed and spoken by the plaintiff-in-error—spoken in public speeches—against the other side? *Far from it. The other side replies to said criminal charge by confession and avoidance!* Hear them—page eleven of defendant-in-error's brief, to wit: "An examination of the offers of evidence made by the plaintiff-in-error, the questions asked and excluded, and, indeed, of the excluded evidence itself as it appears in the deposition which were marked for identification, will show that the alleged

fraud complained of consisted in the giving of testimony, alleged to be false, in the affidavits upon which the commitment was had, in 1897, and in the evidence upon which the plaintiff was adjudged incompetent in 1899. The alleged conspiracy of the relatives of the plaintiff-in-error to deceive the Court by such perjury into deciding as it did decide. Such fraud, however, if proved, is no basis for a collateral attack upon an adjudication. The question whether the testimony, given in support of one side of the case, is or not true is one of the questions necessarily adjudged in every litigation. In the case at bar the question whether the alleged perjurious testimony was true was necessarily adjudged by the Supreme Court of the State of New York in finding the plaintiff-in-error incompetent. This Court could not determine whether or not the testimony in question was perjured without trying over again the very same issue which the New York Supreme Court decided when it made the order complained of. In accordance with these principles it is well settled that the fact that a judgment is procured by false testimony does not open it to collateral attack."

In closing this painful exposition of the state of morals and honesty prevailing in the Metropolis of the United States at the opening of the twentieth century we need scarcely say that we are fully aware of the unusualness of our strictures.

But we have submitted patiently and silently for twenty years to extortion, insult and injury; and we do not propose to pursue a course which has brought us nothing but disaster piled upon disaster—any longer. Silence has been our ruin. Speaking out can do no worse.

We respectfully submit to this learned and upright Court that because men are wealthy it is—to say the least—fallacious to assume that they can do no wrong.

We respectfully submit to this learned and upright Court that because men are leaders in Society, in Finance and in Law it is—to say the least—fallacious to assume that they can do no wrong. Lastly we respectfully submit to this learned and upright Court that because a man or group of men has or have—never been found out—it is—to say the least—fallacious to assume that said man or group of men—can never be found out. Ex-Judge R. T. W. Duke—the talented and untiring cross-examiner of the plaintiff-in-error during —so far as his professional experience, at least, is concerned—one of the longest—if not the longest cross-examinations of a witness on record—extending over some two weeks of time and occupying some five hundred pages of typed matter—again and again assaulted the plaintiff-in-error's position, in criticising men of the national prominence of the "Board of Governors" of "Bloomingdale" and their—so to speak—allied lawyers, alienists, and citizens of high renown. But all to no purpose—as the pages from said cross-examination appendix to this Brief conclusively prove. *When a man's social, political, legal or financial position precludes just criticism of said man—and any injured party so criticising him is loudly—blatantly accused of suffering under a "delusion of grandeur"—as the high-sounding medical phrase of the day has it—then—we respectfully submit to this learned and honorable Court—we are confronting a most deplorable condition of affairs.*

In opening his statement in his brief to the United States Circuit Court of Appeals for the Second Circuit the learned counsel for defendant-in-error says, p. 1:

"The relief demanded in the action, as in all actions for conversion, is not a return of the plaintiff-in-error's property to him, but a judgment for damages, which would necessarily be measured by the value of the prop-

erty at the time of the alleged conversion. The action having been begun in 1904, and the alleged conversion having, of course, taken place at a still earlier date, the recovery sought has no *relation* to the property now in the *committee's hands,* and a judgment in favor of the plaintiff would *vest defendant,* personally, with title to the property in hand at the time of the alleged conversion, at the same time charging him with damages which would probably be much more or much less than the property's present value. The action can have no *direct* effect upon the very much larger *amount of property* which has come into the committee's hands since it was commenced."

This claim, we respectfully submit, is set forth in an effort to confuse the Court.

It should make no difference to the Court what may result with reference to the property which has come into the Committee's hands since the present action was begun. The question for the Court to determine is whether the present action is maintainable. If this action is decided in plaintiff-in-error's favor, it is true that it will result in a judgment for damages against said Sherman, and that the amount of those damages will be determined by the value of the property which came into his possession prior to the institution of this suit, and therefore the immediate effect of plaintiff-in-error's winning the case would not be of broader scope than the property so involved. *Nevertheless,* if plaintiff-in-error wins the present case, plaintiff-in-error's right to win a case thereafter to be instituted, *which will comprehend within its scope all the property which has come into the possession of* said Sherman since the institution of the present case, will also be established, for the reason that said Sherman's alleged legal status as "Committee" of plaintiff-in-error's estate will be destroyed

by the decision of the Court in plaintiff-in-error's favor in the present suit.

Upon plaintiff-in-error's winning the present case of *Chaloner* v. *Sherman*, said Sherman would be immediately thrown into the position of a trustee, under a *"constructive trust,"* or a trustee *ex malaficio* and a *suit in equity would be maintainable against him, we respectfully submit, in which he would be required to account for everything that has come into his possession in his alleged capacity of "Committee,"* and he would be required to make a full and complete delivery of the same to plaintiff-in-error. See Pomeroy's Equity Jurisprudence, Volume 3, Section 1044, second, constructive trusts, which reads as follows:

> "Constructive trusts include all those instances in which a trust is raised by the doctrine of equity for the purpose of working out justice in the most efficient manner, where there is *no intention of the parties to create such a relation, and in most cases contrary to the intention of the one holding the legal title, and where there is no express or implied, written or verbal declaration of the trust."*

Again, in Section 1045 of the same work we find the following:

> "The specific instances in which equity impresses a constructive trust, are numberless—as numberless as the modes by which property may be obtained, through bad faith and *unconscientious acts."*

Again, in Section 1047 of the same work, the following:

> "By the well settled doctrine of equity, a constructive trust arises whenever one party has obtained money which does not equitably belong to him, and which he cannot in good conscience retain, or withhold from another who is beneficially entitled to it; as for example, when money has been paid by accident, mistake of fact, or fraud, or has been acquired through a breach of trust, or violation of fiduciary duty, and the like. It is true that the beneficial owner can often recover the money due to him by a legal action upon an implied assumpsit; but in many instances a resort to the equitable jurisdiction is proper *and even necessary.*"

Under the foregoing authority, after winning Chaloner against Sherman, plaintiff-in-error will have only to choose whether he will proceed at law or in equity to recover everything in said Sherman's hands or under his control, received by him after the present suit was brought.

Therefore, we say again, that the learned counsel for defendant-in-error's said claim is made purely for the purpose of misleading and confusing the Court. The Court, we respectfully submit, has only to decide what is before it, and leave those property rights which are not directly involved in the present cause to be taken care of *in appropriate subsequent proceedings.* In passing, it should be noted that the recovery in the case of *Chaloner* v. *Sherman will, according to the weight of authority, be measured by the highest value of the property between the date of conversion and the date of trial,* 38 Cyc., 2096; *not* "the value of the property at

the time of the alleged conversion," as stated by the learned counsel for defendant-in-error in said claim.

Continuing his statement in his Brief to the United States Circuit Court of Appeals for the Second Circuit, the defendant-in-error says, page 2: "In 1897, by an order of the Supreme Court of the State of New York, dated March 10th, 1897 (Transcript of Record, p. 113, fol. 222-223) the plaintiff-in-error was committed to Bloomingdale Asylum."

An interesting side-light is thrown upon the aforesaid proceedings when it is borne in mind by this learned Court that said proceedings were utterly irregular, illegal, null, void and of no effect, on the strength of the rulings of this learned Court in *Windsor* v. *McVeigh*, discussed at length, *infra*, 93 U. S., where the Court said *infra*, Chief Justice Waite concurring—pp. 277-8—"Until notice is given, the Court has no jurisdiction in any case to proceed to judgment, whatever its authority may be, by the law of its organization, over the subject matter." And again in *Simon* v. *Craft*, 182 U. S., discussed at length *infra*, this learned Court said, in the opinion written by Mr. Chief Justice White: "The essential elements of due process of law are notice and opportunity to defend." For the Commitment Proceedings show (p. 113, fols. 222-223) that the plaintiff-in-error received no notice whatever of the said proceedings—Mr. Justice Henry A. Gildersleeve, of the New York Supreme Court, who signed the Commitment Papers, dispensing with both personal service and substituted service. Furthermore. The deceit and deception which form the foundation of the defendant-in-error's case—based as it is from its very birth upon perjury and fraud—brazenly admitted by the counsel for the defendant-in-error in as hardened an example of confession and avoidance as it has

been our pleasure to meet since we were admitted to the New York Bar in 1885—find an example in the above paragraph in the words: "Bloomingdale Asylum." "Bloomingdale" Asylum is an institution unknown to the law. The real name of said institution being "The Society of the New York Hospital" with Hospital and offices on 15th Street, just West of Fifth Avenue—or were the last time we saw same some twenty years ago or so. On line 156 of said Commitment Papers (p. 109, fol. 214) in said Commitment Proceedings of March 10th, 1897, appear the following words: "It is essential that the official title of the institution (to which an alleged lunatic is committed) should be correctly inserted," which it is *not* in said Commitment papers, as it again is not by the counsel for the defendant-in-error in his aforesaid statement.

Continuing, the defendant-in-error says, page 2: "In 1899 while he was in Bloomingdale, Proceedings were brought by his relatives to secure an adjudication that the plaintiff-in-error was incompetent and to procure the appointment of a committee. These Proceedings, the record in which was offered and received in evidence (pp. 66-143, fols. 126-285) were regularly conducted and resulted in the order already referred to adjudging the incompetency."

As "regularly conducted"—it might be added—as proceedings which are utterly irregular, illegal, null, void and of no effect for lack of opportunity to appear and be heard—on the strength of *Windsor* v. *McVeigh*, and *Simon* v. *Craft*, *supra*—may or can *ever* be: "regularly conducted."

Concerning lack of opportunity to appear and be heard, this learned Court said in *Simon* v. *Craft*, *supra:* "The essential elements of due process of law are notice and opportunity to defend." And in *Windsor* v. *McVeigh*, 93

U. S. *supra*, this learned Court said: "Until notice is given, the Court has no jurisdiction in any case to proceed to judgment, whatever its authority may be, by the purpose of affording the party an opportunity of being heard upon the claim or the charges made. It is a summons to him to appear and to speak, if he has anything to say, why judgment sought should not be rendered. *A denial to a party of the benefit of a notice would be in effect to deny that he is entitled to notice at all*, and the sham and deceptive Proceedings had better be omitted altogether." And again at page 278: "The law is and always has been that whenever notice or citation is required, the party cited has the *right to appear and be heard;* and when the latter is denied (*note the distinction between notice and opportunity*) the former is *ineffectual for any purpose.* The denial to a party in such a case of the right to appear is in legal effect the *recall of the citation to him.*" The case of *McVeigh* v. *United States*, 11 Quall, 259, and the case of *Underwood* v. *McVeigh*, 23 Gratt., (Va.) 409, are to the same effect, and grew out of the same general state of facts. In *Underwood* v. *McVeigh*, at page 418, the Court said: *"No sentence of any Court is entitled to the least respect in any other Court, or elsewhere,* when it has been pronounced *ex parte* and *without opportunity of defense*—a tribunal which decides without hearing the defendant or giving him an *opportunity to be heard* cannot claim for its decrees the weight of judicial sentences."

As has been shown, *supra*, the plaintiff-in-error was confined to his bed with an affection of the spine and had been so confined for some three weeks or more, on the testimony on the stand at the 1899 Proceedings before the Commission-in-Lunacy and Sheriff's Jury—had in New York City, twenty miles away from plaintiff-in-error's cell—on the testimony aforesaid of Dr. Samuel

B. Lyon, Medical Superintendent of "Bloomingdale," falsely so-called—legally The Society of the New York Hospital.

Continuing his statement, the defendant-in-error says, page 2:

"The complaint alleges that the order appointing the defendant-in-error depended for its validity upon the order of 1899, adjudging the incompetency and that the order adjudging the incompetency was void because 'made and entered without lawful or reasonable opportunity to plaintiff to appear or to be heard,' and for lack of jurisdiction. It is further alleged that the opportunity to be heard was denied plaintiff-in-error because when the hearing was held he was still in custody in Bloomingdale under the order of 1897 committing him thereto, which *committing order was obtained by fraud and perjury,* and was made possible because his presence in the State, on which jurisdiction to make that order depended, was due to the fact that he had been lured thither by persons acting in the interest of his relatives.

"The answer denies *all these* contentions and sets up in addition as an affirmative defense the allegation that at the time of the alleged making of the demand upon the defendant, upon which the alleged conversion is predicated, and at the time of the commencement of the action the plaintiff-in-error was and *still is, actually insane* and therefore incapable of performing, by attorney, either act."

An eloquent example of erroneous statement is found in the words in the above citation from the defendant-in-error's brief, as follows: "The answer denies *all* these contentions." To take but *one* of "all these contentions" —although this learned Court will see, we respectfully submit, that the law and the facts—both of which are

well known to the defendant-in-error and his learned counsel—would warrant our taking "all these contentions"—to take but one contention, to-wit: that the "committing order was obtained by fraud and perjury." We shall now cite a portion of the testimony of Winthrop Astor Chanler—the chief Petitioner in the Commitment Proceedings in March, 1897, taken from his Deposition *de bene esse,* pp. 35-82.

UNITED STATES CIRCUIT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK.

JOHN ARMSTRONG CHANLER, Plaintiff,

against

THOMAS T. SHERMAN, Defendant.

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above entitled action, that the testimony of Winthrop Astor Chanler, a witness who is about to go abroad, may be taken *de bene esse*, before a Notary Public at the office of Evarts, Tracy & Sherman, Number 60 Wall Street, New York, on the sixteenth day of November, nineteen hundred and five, at three o'clock in the afternoon, with the same force and effect as if taken under an order by the Court for his examination; and that such testimony may be taken down by a stenographer to be agreed upon and need not be signed by the witness, but the stenographer's notes, when written out, shall be considered the testimony of said witness. Such testimony shall be subject to all legal objections and exceptions, to be taken upon the trial of said action, when said testimony is introduced, as to competency, relevancy or materiality without the necessity of noting any objections on the deposition excepting as to the form of the question.

Dated: New York, November 14th, 1905.

(Signed) LEO G. ROSENBLATT,
Attorney for Plaintiff.

(Signed) EVARTS, TRACY & SHERMAN,
Attorneys for Defendant.

UNITED STATES CIRCUIT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK.

JOHN ARMSTRONG CHANLER, Plaintiff,

against

THOMAS T. SHERMAN, Defendant.

New York, November 16, 1905.

Examination of WINTHROP ASTOR CHANLER, taken before WILLIAM R. MONTGOMERY, Notary Public, under a stipulation annexed hereto and marked Exhibit A.

APPEARANCES: For the Plaintiff, Mr. Leo G. Rosenblatt; for the Defendant, Messrs. Evarts, Tracy & Sherman.

CROSS-EXAMINATION BY MR. ROSENBLATT.

(Page 35):

Q. Is Mr. Sherman a director?

A. He is not.

Q. Has he taken any active part in the management of the Company? I want to know has Mr. Sherman taken any active part in the management of this Company?

A. No; I should say not.

Q. Not as long as you have had anything to do with it?

A. No; he has never been represented on the board; never been on the board.

Q. Never voted on the stock?
A. Never voted—has he voted on the stock?
Q. Yes.
A. As a committee?
Q. Yes.
A. Yes, he has, by giving me power of attorney to vote.
Q. And you voted for him?
A. I voted it.

(Pages 36-41.)

Q. Is that The Merry Mills?
A. No.
Q. That house?
A. No.
Q. What is the Merry Mills?
A. It is a farm at Cobham, Virginia.
Q. Who owns it?
A. My brother.
Q. How long has he owned it?
A. I do not know.
Q. Haven't you ever seen it?
A. Never been there.
Q. Well, how is that? You never visited your brother?
A. He has never asked me to.
Q. How long is this that you have been estranged?
A. Why, I should not say it was an estrangement, but he has never happened to ask me to go down to stay with him in Virginia.
Q. You have never gone of your own accord?
A. I have never gone of my own accord.
Q. Never sought an invitation?
A. Never sought an invitation.
Q. You have had quarrels with your brother, haven't you?

A. Well, the quarrelling was mostly on his side; he has quarrelled with me very often.

Q. *Were you once President of this United Industrial Company?*

A. *I was when it first started.*

Q. And did you remain President until December, '96?

A. I am not sure of the date.

Q. Well, you said——?

A. *He kicked me out, if that is what you mean.*

Q. That is what I mean. He insisted upon your resigning?

A. He insisted upon my resignation. He always had control of the Company.

Q. And that was at that meeting at the Kensington Hotel, to which you have referred in your direct examination as taking place in December, 1896, wasn't it?

A. December or January, but I am not certain of the date. My impression was it was in December, some time before or after Christmas Day—may have been after the New Year.

Q. Was there any altercation between you at that meeting at which he kicked you out, as you say?

A. Yes.

Q. What was the nature of that altercation?

A. He threatened me in various ways. The thing that brought about—Let me get this straight, because I am on oath, and I want to get the thing——.

* * * * * *

Q. Well, wasn't there some quarrel between you with reference to a suggestion that the plaintiff made about an examination of the books of your father's estate?

A. That is perfectly true.

Q. And that was about this time of this meeting?

A. It was at the meeting, before these gentlemen from the South.

Q. Well, now, will you tell us what you remember of that?

A. He was in bed at the time—in fact, in those days he seldom ever got out of it until night or late in the afternoon. And he got into an altercation with me about what—I mean, it was so frequent that I don't remember that quarrel—every time we met at the business meeting, because he would not let anybody say a word but himself, and he was very rude to the President of the Roanoke Rapids Power Company, Mr. Habliston, on several occasions, and I generally took their side, I mean—it was not fair. And I think that row began that day probably in the same way. He was in a very violent frame of mind, intensely irritated and irritable, generally, with me—I had that effect on him—and finally, as a last word, he told me that he would have my accounts as executor and trustee examined into by a special accountant. I told him that that had been his right ever since I had taken that office, or taken charge of the business.

Q. Who was your co-executor?

A. My brother Lewis. My brother never qualified. He was appointed, but he never qualified.

Q. Lewis is the other petitioner?

A. Lewis is the other petitioner—And that made me, foolishly, very angry, and we had words, and I confess to losing my temper and crossing the room toward his bed and instinctively, as if—*I went over there and if he had been standing near me I should have probably struck him.* But he was in bed, and he got up. He said, "Hold on," and he got up in his night gown and began to shuffle his feet into his slippers and was all doubled up doing that in front of me, and then I saw what a

perfectly absurd situation it was, and I went back to my seat and said nothing more. I do not remember what was said. I did not talk to him any more. The other gentlemen were urging us to keep the peace, and I confess I lost my temper.

Q. Wasn't there really a good deal of ill-feeling between all the members of your family, on the one hand, and John Armstrong Chanler, on the other, ever since his marriage?

A. No; distinctly not.

Q. Wasn't there considerable complaint among your brothers and sisters that they were not invited to his wedding?

A. No more complaint—in fact, one of my sisters was down there; my sister Margaret was present. There was not any feeling.

Q. Didn't you yourself write——?

A. Excuse me. There was no feeling any more than a feeling of being hurt at not having been asked. That was the only feeling there was.

Q. Well, how many of you felt that way?

A. I should say that they all had that perfectly natural feeling about it.

Q. None of them was asked to the wedding?

A. Except my sister Margaret. That is my impression. I know she was present. I do not know whether anybody else was asked or not.

Q. Who is Margaret? What is her full name?

A. Margaret Livingstone Chanler.

Q. Is she married since?

A. No; a single woman.

(Pages 45-48).

Q. Was there a law suit in North Carolina or Vir-

ginia about this Roanoke Rapids Power Company property?

A. In connection with the sale of the machinery?

Q. Yes.

A. Yes.

Q. When was that?

A. I do not know that there was a law suit; I do not know that it got as far as that.

Q. Well, didn't somebody get an injunction?

A. Yes, my brother got an injunction.

Q. In what court was that?

A. In the Court of Halifax County, I think, North Carolina. That is the United Industrial Company; that was not the Roanoke Rapids Power Company; that has never had any law suit.

Q. There was a law suit against the United Industrial Company?

A. Yes.

Q. Was the suit against the United Industrial Company, or was it against the officers of the Company?

A. Against the United Industrial Company, as a company.

Q. Brought by your brother?

A. Brought by my brother, an injunction.

Q. And the injunction was made permanent, was it?

A. It has not been dissolved yet. We are hoping to get it done.

Q. Do you remember the title of that suit?

A. No, I could not tell you that. I can tell you the circumstances.

Q. Well, what were the circumstances?

A. The machinery in the mill was deteriorating right along, for want of use. It was a peculiar machinery, made for the knit goods trade. The mill had always been a failure in making knit goods. The offers that we

had for the property—people coming and wanting to lease it, people wanting to buy, they had always said, "We don't want your machinery." So we decided that the best thing to do was to sell the machinery while it was still of some value, and get rid of it, and have the empty mill standing there for a man to come in and put in his own. After a great deal of trouble we finally succeeded in getting a purchaser who gave us a round sum for it, $8,000—that was the best we could do, and I was advised—we were advised all around that it would be much better to do it, because otherwise it was junk, it would deteriorate and become junk. We sold it to this man, and he went down there with his workmen to remove it from the mill. My brother was informed of the proceeding and instructed an attorney in the neighborhood to get an injunction to stop it, stop the machinery from leaving the mill. We went down there and saw his lawyer, my brother's lawyer, and talked the thing over with him, with the result that my brother agreed to the machinery leaving the mill and the sale going through, on condition that the money for that purpose should be held by the receivers appointed by the Court, one of whom was his lawyer and the other was ours.

Q. When was this injunction obtained? Was it in 1902?

A. Oh, no; quite recently.

Q. In June, 1905?

A. Last summer, yes.

Q. June 20, 1905, wasn't it?

A. It was pretty well——.

Q. The suit was begun in October, 1904, wasn't it?

A. About the injunction?

BY MR. BICKFORD:

Q. The suit on which the injunction was granted?

A. I don't hardly think it was as long ago as that.

Q. That is probably right.

A. That is probably right if you have got it down there. I thought it was in the autumn, but it was probably in the spring. Oh, yes, they held off, they let the stuff go through, providing we sent the money down there, and that was in October, was it?

BY MR. ROSENBLATT:

Q. That was in October, 1904, that the injunction was obtained, and it was made permanent June 20, 1905.

A. That was probably right, yes.

(Pages 50-53).

Q. Well, when were you last an officer of the United Industrial Company?

A. I am an officer now.

Q. Well, you were compelled to retire in December, '96?

A. Yes.

Q. Then your brother was committed shortly after to Bellevue Hospital?

Mr. Bickford: Bloomingdale.

Q. To Bloomingdale, I mean.

A. Bloomingdale.

Q. And when did you again become an officer of the United Industrial?

A. I could not give you the exact date.

Mr. Bickford: I do not think this is material, Mr. Rosenblatt.

The Witness: I do not know. After Mr. White gave it up.

Q. Was it after the order was made appointing Mr. Butler the committee?

A. That I was——.

Q. That you became an officer again?

A. After that; yes.

Q. How long after that?

A. I have to look at the books.

Q. Was it after the order was made appointing Mr. Sherman a committee?

A. I do not know.

BY MR. BICKFORD:

Q. Don't you remember how long you have been President?

A. I do not.

BY MR. ROSENBLATT:

Q. Are you President?

A. I am.

Q. Who owns the controlling interest in the United Industrial Company?

A. My brother, J. A. Chanler.

BY MR. BICKFORD:

Q. Does he own a majority of all the stock of the Company?

A. Yes.

BY MR. ROSENBLATT:

Q. Then you owe your presidency to the votes given by Mr. Sherman as committee?

A. I don't know without looking that up; it is all on record in the book; we could have it in five minutes, when it happened and everything.

Q. Did Mr. Sherman give you his proxy?

Mr. Sherman: Excuse me to interrupt and say that there has never been a meeting of the stockholders. I think the vacancies have been filled by the directors from time to time, in their succession.

Q. Who are your directors in the United Industrial Company?

A. Why don't you get the book, and then I can answer this much quicker.

Q. Who elected your co-directors and yourself as directors in the company?

A. I suppose my brother or his committee did it—must have. He has control, hasn't he?

Mr. Bickford: Well, he has not voted the stock.

Mr. Sherman: I said that the directors filled vacancies from time to time.

Mr. Rosenblatt: I know, but this Mr. Winthrop Chanler was not a director at the time his brother was committed.

Mr. Bickford: No; but the other directors appointed Winthrop Chanler.

The Witness: The other directors appointed Winthrop Chanler.

Mr. Rosenblatt: How can they elect him?

Mr. Sherman: It is a New York corporation, and the directors hold office until their successors are appointed.

The Witness: There has never been the slightest hitch

in the company. It has gone on smoothly and been all right for nearly four years—and there it is; we can show you that at any moment.

* * * * * * *

Q. While your brother was in Bloomingdale Asylum was he able to manage his property?

Mr. Bickford: Objected to.

Mr. Rosenblatt: What is your objection? Put it on the record, and we will get the answer.

A. Do you mean from a legal point of view?

Q. No, I mean was he able physically to manage his property; was he able to give directions as to what should be done with his property?

A. I do not know. How can I tell you?

Q. Did he manage his property while he was in Bloomingdale Asylum?

A. No, I do not think he did.

Q. Were not his hands tied so that he could not manage his property while there?

Mr. Bickford: Objected to.

A. I should say certainly not; his hands were not tied.

Q. In what respect was he able to do anything about his property while he was in Bloomingdale Asylum?

A. He had interviews with Mr. White and had interviews with Mr. Philip, who went up and saw him and would tell him what they proposed to do.

Q. How do you know that? You said that on your direct.

A. Because they would come back and tell me so. That is all I know about it.

* * * * * * *

Q. You said that Mr. White was a friend of his?

A. A very great friend of his; his best friend.

Q. Who told you this?

A. My brother, over and over again.

Q. When did he last tell you this?

A. I can't tell you.

Q. *Did you ever see any power of attorney which Mr. Stanford White had from your brother after your brother was committed to the asylum?*

A. *To the best of my knowledge and belief, I did.*

Q. What was the date of that power of attorney, do you know?

A. I do not know anything about it.

Q. How do you mean, you do not know anything? Didn't you see it?

A. I may have seen it, but I had nothing to do with the making of it.

Q. I know, but did you see it?

A. To the best of my knowledge and belief, I saw it.

Q. When?

A. I do not know when—around about that time.

Q. Who showed it to you?

A. Mr. White.

Q. Where?

A. At his office, probably.

Q. Don't you know?

A. I do not know, no.

Q. What makes you think?

A. He may have shown it to me at Mr. Butler's office.

Q. What makes you think he showed it to you?

A. *Because I have a strong recollection of the thing having been obtained at that time.*

Q. *While your brother was in the asylum?*

A. *While he was up at Bloomingdale, yes.*

Q. Did you suggest to Mr. White that he should obtain a power of attorney from your brother while your brother was in the asylum?

A. I did not.

Q. Do you know who did?

A. I do not.

Q. Do you know who drew the power of attorney? Was it Mr. Butler?

A. I do not know. I presume it was Mr. Butler; he was his adviser in all that Mr. White did, I should say.

(Pages 71-72.)

Q. Your brother was committed March 10th, 1897. Now how long prior to that time did you go South with Mr. White and Dr. Fuller?

A. I didn't say I went South with Mr. White and Dr. Fuller.

Q. Mr. White and Dr. Fuller did go South?

A. Yes.

Q. And you went to Charlottesville, Virginia?

A. To the best of my recollection I met them there.

Q. When was it you met them at Charlottesville; a month or a week before?

A. In the neighborhood of the first of March I should think; the exact date I can find out.

Q. Did you go to Charlottesville purposely to meet them?

A. Yes.

Q. How can you fix the date?

A. I think I have got it in a little diary at my office.

Q. And that is the only way you can fix it?

A. Possibly yes, not probably.

Q. You can furnish that diary to Mr. Sherman, can you?

A. I can furnish the date.

Q. I want the diary.

A. I can give you the leaf of the diary if I can find the diary.

Q. Did you see Hartnett, your brother's valet, when you went down there?

A. I don't remember.

Q. So Mr. John Armstrong Chanler was not in Charlottesville at the time of your visit, was he?

A. No.

Q. Where was he then?

A. To the best of my recollection he was at his place at Merry Mills.

Q. And you did not go with Mr. White and Dr. Fuller to Merry Mills?

A. No.

Q. Did you have any conversation with them before they left Charlottesville to go to Merry Mills as to their plan of action?

A. Yes, sir.

(Pages 76-79.)

Q. Did Dr. Fuller go down there at your suggestion for the purpose of examining your brother?

A. Yes; he didn't examine him. Do you mean examining him for the state of his health?

Q. Yes.

A. Yes, to see what was the matter with him.

Q. What did you tell Dr. Fuller in order to prepare him for such examination?

A. I told him that we were informed that my brother was in a very bad state of health; that nobody could do anything with him; that he was neglecting all his affairs and behaving in a most extraordinary manner and asked him to go down there as his friend's physician and see him.

Q. Did you tell Dr. Fuller that these statements you made to him concerning your brother were statements derived from hearsay from letters?

A. Yes, sir.

Q. Did you tell him you did not know anything of your own knowledge?

A. I don't remember.

Q. Did you tell Mr. White at that time what you had heard from Virginia?

A. Yes.

Q. Now you have very frankly admitted that you and your brother were on very unfriendly terms at that time; is that so?

A. I never said that.

Q. Didn't you say he kicked you out of the office of president of the United Industrial Company in December?

A. Yes, but there is a much better expression; insisted on my resignation.

Q. The phrase that he kicked you out was your own phrase, was it not?

A. Yes, there was no violence of any sort used.

Q. There was a very angry altercation?

A. Yes.

Q. And it reached such a point that you were on the point of assaulting him when you stopped to reflect that your brother was in bad health and it would not be the right thing to assault him; is that so?

A. Practically.

Q. That is a pretty violent altercation, is it not?

A. Pretty violent altercation; he had insulted me before strangers.

Q. Insulted you in what way; you didn't say anything about that?

A. I beg your pardon, I did. I told you that after abusing me he said: "And what is more I am going to have your matters looked into, the estate accounts looked into, and have them examined by an accountant, for I am not at all sure that things have gone right."

Q. And from that time to this day you have never seen your brother, have you?

A. I never have.

Mr. Bickford: You have seen him once?

Witness: I saw him getting on the platform, but I had no chance to talk with him.

Q. Am I exaggerating then if I say your relations to him were unfriendly at the time when you applied for his commitment?

A. On my part, no, absolutely no.

Q. The relations were not brotherly, were they?

A. A man could refuse to see his brother even if he should express his affection or dislike either way for him.

Q. Under those circumstances why didn't you send Lewis Chanler down there to investigate your brother's condition of health instead of going yourself—wasn't Lewis more friendly to him than you?

A. I don't recollect whether Lewis was asked to go or not.

Q. Who asked you to go?

A. I was the only one to go.

Q. Why?

A. Because I was associated with him in business and his friends asked me to do it, and I was the oldest one of the family. I had seen him more recently than any of the others.

Q. How recently had Lewis seen him?

A. I don't know, possibly not for many months.

Q. How do you know that?

A. I don't know it.

Q. Did you have any conversation with Lewis before you went down there?

A. Yes.

Q. Didn't the question come up as to whether he or you should go?

A. I don't think so.

Q. Did Lewis personally know anything about the condition of your brother's health?

A. I don't think so.

Q. Do you know whether Lewis ever visited him at Merry Mills?

A. I do not.

Q. Did Lewis tell you that he had visited him at the time?

A. No.

Q. Did Lewis tell you that he knew anything at all about your brother's, the plaintiff's, condition of health?

A. No.

Q. Now did Mr. Carey know anything about your brother's condition of health at the time of the commitment?

A. Except what Dr. Fuller told him.

Q. I mean in addition to what he was told by Dr. Fuller and by you, did Mr. Carey know anything at all about the condition of your brother's health?

A. No, not at that time.

(Pages 79-80.)

Q. So that Mr. Carey had not seen your brother for at least two years prior to the time of commitment?

A. I don't know that.

Q. Wasn't that discussed between you when Mr. Carey came down here?

A. It may have been.

Q. Now why, I ask you, that is because you probably remember that in your application for your brother's commitment you and Mr. Lewis Chanler and Mr. Carey sign a petition in which you state that "Mr. John A. Chanler has, for several months, while at his home in

Virginia, been acting in a very erratic manner. He has limited himself to a peculiar diet; he has burned his hands by carrying hot coals in them; he has devised many peculiar schemes, such as a roulette scheme to beat Monte Carlo, and he has given as a reason of these and other acts that he is inspired by a spirit which directs him; for the past three weeks entirely he has constantly talked of these delusions; has neglected his health; has injured his person and has been at times highly excited," and then all three of you sign an affidavit stating that you knew the contents of the foregoing petition and that the same was true of your own knowledge except as to matters therein stated to be alleged on information and belief, and there are no matters in the petition which are stated on information and belief; now how did you come to make that affidavit that you made these facts of your own knowledge?

A. Can I say I was told this and that by so and so and had seen him and talked with him? *You know I didn't see him myself. You know Lewis nor Carey didn't see him.*

(Pages 80-82).

Q. Do you remember that in your petition you did not state the names of a single one of the witnesses on whose reports you claim to have acted?

A. If that is the way the petition reads.

Q. Who framed this petition? Do you know who wrote it out?

A. I do not.

Q. Do you remember whether you did it or whether your lawyer did it?

A. I didn't do it and I had no lawyer. Do you mean at the time of the commitment?

Q. Yes.

A. No; I had no lawyer.

Q. Hadn't you consulted with Mr. Winthrop, Jr., of the firm of Jay & Candler?

A. To the best of my recollection no. *I consulted Mr. Henry Lewis Morris, who was our family lawyer,* but I don't think he had anything to do with drawing the petition.

Q. Who went down with you, what lawyer, to Judge Gildersleeve?

A. To the best of my recollection there was no lawyer except my brother Lewis, who is a lawyer.

Q. Lewis is a lawyer?

A. Yes, sir.

Q. Do you remember whether he drew this petition?

A. I do not.

Q. Do you remember whether you read the petition over before you signed it?

A. Certainly.

Q. You knew that it was a very serious matter you were stating?

A. Yes.

Q. And that the statements contained in this petition were very solemn statements?

A. Yes.

Q. And had to be very carefully considered?

A. Certainly.

Q. And that you considered very carefully this statement, didn't you: "Mr. J. A. Chanler has for several months, while at his home in Virginia, been acting in a very erratic manner?"

A. Yes, sir.

Q. You considered that carefully?

A. Yes, sir.

Q. Why did you speak of his home in Virginia? Did

you know he had a home in Virginia?

A. I knew he had a house there.

Q. Why did you call it a home?

A. I didn't say I called it a home. I didn't write the petition.

Q. You signed it and swore to it?

A. Yes.

Q. And you know what home means, don't you?

A. I do."

How a man with the slightest respect for the truth can deny the contention of fraud and perjury, where the party implicated has been forced, under cross-examination, to admit his wrongdoing as frankly and unequivocally as said Winthrop Astor Chanler was forced to admit his wrong-doing—we respectfully submit—we utterly fail to see.

Furthermore. The same spiteful and malicious spirit again appears in the following gratuitous slur on the plaintiff-in-error upon the part of the counsel for the defendant-in-error—in the very next paragraph of said defendant-in-error's said statement, to wit: "At the trial, the plaintiff-in-error (who did not personally appear) sought by his counsel to introduce masses of evidence." The slur in "who did not personally appear" is palpably intended to convey the idea to the Court that the plaintiff-in-error was afraid to appear. Whereas the proved fact is that the plaintiff-in-error's spine was so injured—a nervous affection thereof—by years of false imprisonment in "Bloomingdale," that he was unable to testify except in a reclining attitude, and only then at certain hours and for a briefer period than that of the daily session of a Court. Therefore—for the above reason—and that reason only, the plaintiff-in-error did not personally appear in New York, but *did*

personally appear in Charlottesville, Virginia, and depose from on or about the first day of October, 1911, to on or about the middle of January, 1912, with continuances on Saturdays and public holidays.

Continuing his Statement the defendant-in-error says, page 3: "At the trial the plaintiff-in-error (who did not personally appear) sought by his counsel to introduce masses of evidence which were excluded as having no tendency to show either that the Supreme Court of the State of New York lacked jurisdiction to make the order of 1899 adjudging the incompetency and appointing the original Committee or that the proceedings were tainted with fraud of any such character as would open the adjudication to collateral attack. Plaintiff-in-error's counsel having failed to introduce or offer evidence sufficient to show even *prima facie* either that the New York Court was without jurisdiction, or that its order was invalidated by fraud, the learned Trial Court at the close of this case directed a verdict for the defendant-in-error."

The foregoing statement is erroneous in the extreme, whether the statement be taken as a whole or separated into its several parts or heads.

The learned Judge Holt flatly refused to hear evidence upon said heads. It was not a question of insufficiency of evidence. The learned Judge Holt simply refused to hear any evidence and frankly so stated.

On this point we refer the Court to the printed record, pages 24 to 43 and 47 to 59, inclusive.

Coming now to the Points, Page 4 *et seq.* in the learned counsel for defendant-in-error's said brief, before the Circuit Court of Appeals.

POINT

I.

"THE LEARNED TRIAL COURT DID NOT ERR IN EXCLUDING EVIDENCE OFFERED TO SHOW THE MENTAL CONDITION OF THE PLAINTIFF A VARIOUS TIMES.

"It is perfectly well settled that the issue decided by an Adjudication of the Court of one jurisdiction will not be relitigated in the Court of another, and that the Adjudication must be taken at its face value, unless shown to have been rendered without jurisdiction or procured by extrinsic fraud."

To which we respectfully submit that the law and the facts in this case prove that said Adjudication was rendered both without jurisdiction *and* was procured by extrinsic fraud—if by extrinsic fraud is meant *fraud which was not known to be fraud at the time of the Adjudication.* Since the question of the perjury of the three Petitioners was never brought forward in the 1897—the Commitment Proceedings—nor in the 1899 Proceedings before a Commission-in-Lunacy and Sheriff's Jury; for the conclusive reason that the plaintiff-in-error was neither present nor represented by counsel at either Proceeding. Continuing the defendant-in-error says, pages 4 and 5 of his said brief:

"Accordingly, the question whether or not plaintiff-in-error was actually insane when so adjudged could not be litigated in this action (Matter of Curtiss, 137 App. Div., 584; 199 N. Y. 36). All evidence tending to prove his sanity in 1899 was therefore utterly irrelevant and properly excluded. The same reasoning holds true with added force as applied to his mental condition in 1897 and in 1901."

To which we respectfully submit, *first*, that since the 1897 and 1899 Proceedings are shown to be null and void, the question of sanity at once becomes a main issue. *Second*, That since the question of the plaintiff-in-error's sanity was set up in the defendant-in-error's answer it becomes more than ever a main issue. See 162 *Federal Reports*, where the learned Judge Noyes says, page 39, *supra:* "The defendant joins issue upon the fact of sanity after the New York orders were made."

Continuing the learned counsel for defendant-in-error says, page 6 of his said brief:

"*If* and *when* the defendant-in-error offered evidence to show that the plaintiff-in-error was presently insane, evidence on that subject would become highly material. The rulings complained of in these assignments of error, so far as they relate to evidence of plaintiff-in-error's sanity after 1901, simply excluded matter not relevant at the time when offered and which would become relevant only in case the defendant-in-error should offer evidence in support of his affirmative defense."

To which we respectfully submit the words of the learned Judge, 162 *Federal Reports, supra:* "*The defendant joins issue upon the fact of sanity after the New York orders were made.*"

Continuing the learned counsel for defendant-in-error says, page 6 of his said brief:

"The ruling of the Trial Court, excluding the record of the Proceeding in Virginia in 1901, which purported to adjudge that the plaintiff-in-error was sane, was correct for the same reason. This adjudication might be *important evidence* upon the issue of sanity *whenever that* issue was itself before the Court, but could not be received during the plaintiff-in-error's case."

To which we respectfully submit the words of the learned Judge Noyes, 162 *Federal Reports, supra:*

"The Constitution of the United States vests in its judicial Department jurisdiction over controversies between citizens of different States. The Petitioner, as a citizen of the State of Virginia, bringing his said suit in the Circuit Court (since changed to the District Court) of the United States, was availing himself of a right founded upon this constitutional provision. And he came into that Court with a decree of the Court of the State of which he was a citizen, declaring his sanity. *We can not disregard that decree.*" And also: "The defendant *joins issue* upon the fact of sanity *after* the New York orders were made."

Which in turn is supported by Mr. Justice Harlan in *Arrowsmith* v. *Gleason*, 129 U. S. 86. Mr. Justice Harlan said:—"But this Court observing that the constitutional right of the citizen of one State to sue a citizen of another State in the courts of the United States, instead of resorting to a State tribunal, would be worth nothing, if the Court in which the suit is instituted could not proceed to judgment and afford a suitable measure of redress; * * * we have repeatedly held that the jurisdiction of the Courts of the United States over *controversies between citizens of different States, cannot be impaired by the law of the States which prescribe the modes of redress in their Courts, or which regulate the distribution of their judicial power—As said in Barrow* v. *Hinton*, 99 U. S., the character of the case is always open to examination for the purpose of determining whether, *ratione materiae* the Courts of the United States are incompetent to take jurisdiction thereof. State rules on the subject cannot deprive them of it."

Continuing the learned counsel for defendant-in-error says, pages 6 and 7 of his said brief:

"The remarks, in the opinion of this Court, in *Chanler* v. *Sherman*, 162 Fed. Rep., 19, to the effect that the present sanity of the plaintiff-in-error is at issue in the cause, *do not affect* the correctness of the rulings under consideration. The question before the Court in that Proceeding *was simply* whether the plaintiff-in-error was entitled to a writ of protection to enable him safely to come to New York to try his case. To decide this question the Court was obliged to consider what questions the plaintiff-in-error *might have* to litigate during the entire trial. One of *these questions undoubtedly was that* as to his sanity *at the times* of the alleged conversion and *afterward*. If the verdict had not been directed in favor of the defendant-in-error, the latter *might conceivably have* offered proof in support of the allegations *of continued* insanity, which would then have become a highly important issue. Under the circumstances that issue *was not reached*. The ruling of the Trial Court, therefore, was not in conflict with that of this Court as expressed in that opinion."

To which we respectfully submit the words of the learned Judge Noyes, 162 Federal Reports, *supra*. *"The defendant joins issue upon the fact of sanity after the New York orders were made."*

Continuing the learned counsel for defendant-in-error says page 7 *et seq.*, of his said brief:

POINT

II.

"THE RULING OF THE TRIAL COURT, EXCLUDING EVIDENCE OFFERED TO SHOW THAT THE PLAINTIFF-IN-ERROR, WHEN COMMITTED TO BLOOMINGDALE HAD BEEN FRAUDULENT-

LY LURED INTO THE STATE OF NEW YORK FOR THE PURPOSE WAS NOT ERRONEOUS.

"In the first place, as has already been stated, the learned Trial Court assumed for the purposes of the case that the plaintiff-in-error had been fraudulently lured (Transcript of Record, p. 39, fols. 73-74). The actual ruling excluding the evidence of the fact assumed *cannot*, therefore, have been erroneous. The Court, however, was also right in disregarding the fact assumed, and treating it as immaterial. The alleged luring, if it took place, occurred before the 1897 Proceeding and before the plaintiff came to New York in February of that year. That Proceeding did not, of course, adjudge the plaintiff-in-error to be an incompetent, but merely provided tentatively for his detention for his own and the public good. It had *nothing whatever* to do *with the Proceeding* two years later by which the plaintiff-in-error was adjudged incompetent. The latter was a wholly new Proceeding, begun by the issue and service of fresh process, and in it the whole question of the plaintiff-in-error's then present sanity was *tried out*. The tribunal was not in any sense governed by the *ex parte* order of commitment, but was free to decide the question absolutely as matter of *first impression*. If the plaintiff-in-error was brought within range of the order of commitment by means of a process of fraudulent luring that might affect the order of commitment, but it *cannot affect* an independent *adjudication made years later.*"

To which we respectfully submit that the seven following cases—set forth at large, and rulings given in great fullness under Point 1, The Nineteen Points of Law, *supra,* show that Courts frown down all attempts at fraud, trickery, or misrepresentation—all attempts at

luring a party from one jurisdiction into another jurisdiction. *The sole and only exception is in the case of crime.* The said seven cases, to-wit: *Carpenter* v. *Spooner*, 2 Sandf. (N. Y. S. Super. Ct. Rep.) 717. *The Olean Street Railway Cmpany, Respondent,* v. *The Fairmount Construction Company, Appellant,* 55 App. Div. Supreme Court, 4th Department, 1900, p. 292. *Wyckoff* v. *Packard*, 20 Abb. N. C. 420. (N. Y. City Court, Special Term 1887). *Baker* v. *Wales*, 14 abb. Pr. Rep., (U. S.) 331 N. Y. Super. Ct. 1873, Gen'l Term. *Lagraves Case*, ib. p. 333, note (Supreme Ct. 1st District, Spec. Term 1873). *Metcalf* v. *Clark*, 41 Barb. 45 (1864).

So far, we respectfully submit, from the Commitment Proceedings of 1897, providing—as the counsel for the defendant-in-error claims above—"merely *tentatively* for the detention of the plaintiff-in-error for his own and the public good"—*said Commitment was permanent, definite and for all time.* The only reason why the Chanler family—the parties behind both the 1897 and the 1899 Proceedings—brought the 1899 Proceedings to declare the plaintiff-in-error an incompetent person was —on the evidence—merely to further their own plans and safeguard the property of the plaintiff-in-error which their testimony at the 1899 Proceedings proves they intended to inherit from the plaintiff-in-error and fully expected to inherit from the plaintiff-in-error by holding the plaintiff-in-error a prisoner for life in "Bloomingdale"—falsely so called—and upon the plaintiff-in-error's death inheriting his large property through being the plaintiff-in-error's *next to kin, and heirs at law**—since the plaintiff-in-error was expected to die

*Winthrop Astor Chanler on the stand at the 1899 Proceedings, (T. R. p. 131, fol. 253). Q. "Those are his brothers. A. Yes, sir, and myself. Q. And his sisters, name them? * * * Q. Those are all of full age? And are all his sisters? A. Yes, sir. Q. Those are his heirs and next of kin? A. Yes, sir."

intestate; since the plaintiff-in-error was expected to be kept a prisoner in "Bloomingdale" until he did die. The only reason for bringing the 1899 Proceedings was in order to prevent the foreclosure of a large mortgage on a piece of Broadway property worth, according to the testimony of Winthrop Astor Chanler—the chief Petitioner in the Commitment Proceedings of 1897—at said Sheriff's Jury Proceedings in 1899—worth several hundred thousand dollars. The property still belongs to the plaintiff-in-error and is known as number 298 Broadway, New York, being a ten story store and office building. The parties furnishing the money for the rebuilding of said 298 Broadway had declined to advance the necessary money unless a Committee of the person and estate of the plaintiff-in-error were appointed, with whom said parties could contract and deal in a regular business way. Such contracts and such dealings being out of the question between said parties and the plaintiff-in-error, since the latter was lying in a cell in "Bloomingdale" under a charge of insanity.

So far from "the alleged luring * * * had nothing whatever to do with the Proceedings two years later by which the plaintiff-in-error was adjudged incompetent" —as the counsel for the defendant-in-error claims above —said luring went to the very heart of the said 1899 Proceedings; tainted them with fraud of an incurable character and *were the sole and only means of bringing the latter,* 1899 *Proceedings, to pass.*

For without the luring in 1897, the 1897 Commitment Proceedings would never have taken place, since the plaintiff-in-error was living quietly at his home, "The Merry Mills," Cobham, Virginia, and had arranged his business affairs in New York in order to permit him to remain at "The Merry Mills" for an indefinite period— and it is *self-evident, therefore, that, without the* 1897

Proceedings, those of 1899 *could not have come to pass.*

So far from the 1899 Sheriff's Jury Proceeding being —as counsel for defendant-in-error asserts above—"a wholly new Proceeding begun by the issue and service of fresh process, and in it the whole question of the plaintiff-in-error's then present sanity was tried out" *the fact is that the* 1897 *Commitment Proceedings were made part and parcel, art and part of said Sheriff's Jury* 1899 *Proceedings by being joined thereto*—as an examination of the record in the New York Supreme Court will show. *The* 1897 *Proceedings were specifically joined* to the papers making up the 1899 Proceedings. And so far from "the plaintiff-in-error's then present sanity being tried out"—as counsel for defendant-in-error alleges above there was no trial at all worthy the name. *It was a mere travesty of a trial.*

"The plaintiff-in-error was ill in bed at the time of said trial."

The Medical Superintendent of "Bloomingdale," Dr. Samuel B. Lyon, so testified, *supra*, and also testified that plaintiff-in-error *had* been confined to his bed with the same trouble *then*—at the time of the 1899 Proceedings—afflicting plaintiff-in-error—namely a pain in his spine which prevented his walking—Dr. Lyon testified that plaintiff-in-error *had been confined to his bed with the same trouble for three weeks previous to the bringing of the said Proceedings.* The plaintiff-in-error —as Dr. Lyon testified—had asked him not to represent him at the said Proceedings but to inform the Commission and Sheriff's Jury that he was physically incapacitated from attending the Proceedings—had twenty miles away from plaintiff-in-error's cell in "Bloomingdale"—namely in New York City.

Plaintiff-in-error was not present at said Proceedings, nor *was he represented by Counsel or even a Guar-*

dian ad litem as was Mrs. Yetta Simon, in *Simon* v. *Craft, supra:* No witnesses were brought except either those appearing in the 1897 Proceedings two years previous—and in this case *no witnesses*† *appeared except one of the Petitioners* in the 1897 Proceedings, and interested professional witnesses, such as Dr. Samuel B. Lyon, the said Medical Superintendent of "Bloomingdale" who was naturally interested in retaining the highest pay patient in "Bloomingdale"—which the plaintiff-in-error was—he paying through the late Stanford White—at one time his power of attorney—and later through the late Stanford White's brother-in-law, the late Prescott Hall Butler—*entirely against Plaintiff-in-error's will* in both instances—over five thousand dollars a year into the "Society of the New York Hospital" the legal name of "Bloomingdale." The only two other witnesses at said 1899 Proceedings—also professional witnesses—were the late Dr. Austin Flint, Senior, and Dr. Carlos F. Macdonald, *paid alienist engaged by* the Chanler family—as the record in the New York Supreme Court shows—*to find the plaintiff-in-error insane.* Even Dr. Samuel B. Lyon was not an unprejudiced witness since the same record shows that he *also* was employed by the Chanlers—*though paid out of the estate of the plaintiff-in-error—as were also Drs. Flint and Macdonald.*‡ Continuing, the defendant-in-error says, page 8 of his said brief:

"In the second place, it is not alleged that the defendant-in-error from whom damages are sought was concerned in or privy to the luring, nor was it specifically alleged or proved, nor was there any specific offer to prove, that even the original Committee was connected with the acts complained of."

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†Except an employee whose testimony was strictly confined to property-description. (T. R. pp. 126-130, fols. 246-252.)

‡T. R. pp. 141-142, fols. 273-277.

It is not alleged, we respectfully submit, that the present "Committee"—falsely-alleged Committee of plaintiff-in-error's person and estate—or his predecessor were "concerned in or privy to the luring"—but it is strongly —*most* strongly inferred.

For the following reasons. The first falsely alleged Committee—said Prescott Hall Butler—was the brother-in-law of the late Stanford White, besides being his legal adviser.† His successor, Thomas T. Sherman, is a member of the same law firm of which the late Prescott Hall Butler was a member—namely the then firm of Evarts, Choate and Beaman—now Evarts, Choate and Sherman of 60 Wall St., New York. This firm—as the evidence contained in this Brief shows—was the private Counsel for "Bloomingdale." Moreover, the head of that firm, Joseph H. Choate, Sr.—now counsel for said firm—was—during all said Proceedings and is now for all that plaintiff-in-error knows to the contrary—a Governor of The Society of the New York Hospital: "Bloomingdale"—falsely so-called. It was strongly to the interests of said firm, therefore, from *every* professional and business interest to get so expensive and valuable an asset to the income of the Society of the New York Hospital as plaintiff-in-error would be, into the clutches of said Institution for purely business reasons—and—once there—*keep him there.*

Continuing the defendant-in-error says, page 8 of his said brief.

"Again, the evidence shows that long before the Commitment Proceeding was begun, any luring there may have been had *spent any force* it may have had. He came to New York in February, 1897 (pp. 36-37, fol. 69). The petition on which he was committed was not verified till March 10th (p. 112, fol. 219).

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†Deposition *de bene esse* of Winthrop Astor Chanler—*supra.*

"If, then, he ever was lured, a period of from [illegible]n days to several weeks passed between the luring and the taking advantage of it, there was no proof, or offer to prove, that during all this time the plaintiff was *not a free agent here or that any fraud* was used to *induce him to remain.*"

We respectfully submit that the luring had not "spent any force it may have had" as defendant-in-error alleges above. For the following reasons:

First. Had there been no luring the plaintiff-in-error would never have been in New York.

Second. While there the late Stanford White was in constant, even daily, communication with plaintiff-in-error who—trusting the late Stanford White as his best and closest friend confided in said Stanford White all his plans and wishes. Said Stanford White therefore knew that there was no fear of plaintiff-in-error's hurrying back to Virginia without due and ample notice to him—said Stanford White. Since said Stanford White had requested plaintiff-in-error to permit said Stanford White to become the latter's unlimited power of attorney to transact all plaintiff-in-error's business for him in New York when plaintiff-in-error should return to his home in Virginia. As is explained in Plaintiff's Exhibit 6—the letter from plaintiff-in-error to the late Captain Micajah Woods, attorney at law of Charlottesville, Albemarle County, Virginia, dated July 3, 1897—written in "Bloomingdale"—plaintiff-in-error declined to give said Stanford White an unlimited power of attorney, but did give said Stanford White a *limited* power of attorney. This, of course, necessitated frequent business conferences between said two parties and said Stanford White well knew that plaintiff-in-error would not think of returning to Virginia until all his affairs, in a business way, had been fully explained to said Stanford White.

When this had been done—which, of course, required time—said Stanford White being at the head of the great firm of architects, McKim, Mead and White, of New York City, was an extremely busy man and could not spare the time to acquaint himself with plaintiff-in-error's multifarious business interests, North and South, except at rather long intervals. Hence it required about a month—plaintiff-in-error reached New York, February 13th, 1897, and was arrested and taken to "Bloomingdale" March 13th of the same year—to wind up plaintiff-in-error's affairs and put them in such shape that said Stanford White might be in a position to intelligently handle the same. No sooner had plaintiff-in-error done this than he was arrested and carried to "Bloomingdale." Plaintiff-in-error *was* a "free agent" as defendant-in-error asserts above, in so far as a man can be a "free agent"—under *surveillance*.

Continuing, the defendant-in-error says, pages 8 and 9 of his said brief:

"Moreover, even if the Commitment Order of 1897 was made possible by a fraudulent luring of the plaintiff-in-error into the State of New York, the jurisdiction of the court *was not impaired* thereby. As was pointed out by the learned Trial Judge, the jurisdiction of the State over questions of incompetency depends upon very different principles from those involved in questions of individual controversies. The State itself has a vital interest in the proper disposition of incompetent persons and it has the right and duty to determine the mental condition and status of every person *within its* boundaries at any given time. The decisions cited by the learned counsel holding that where the service of a summons in a suit involving an ordinary private controversy is obtained after the defendant has been fraudulently lured into the jurisdiction, the summons will be set aside,

differ from the case at bar in two material particulars. In the first place, the attack in those cases is always direct, by motion in the action itself to set aside the summons, and not collateral, by an action in another jurisdiction. In the second place, the private controversy involves no public question and the court is, therefore, fully justified in declining to give either of the parties the benefit of its assistance when its aid has been invoked by fraud. Where, however, as in *an issue as to insanity,* the State itself has an inherent interest in the controversy, the Court will not decline jurisdiction *even if* the alleged incompetent *is improperly brought within its territorial sphere.* The Court cannot and will not shirk the duty which it owes the whole public of determing whether or not the person in question belongs to the class which requires supervision, merely because the presence of the alleged incompetent within its territorial jurisdiction has been brought about by a fraud upon him. He is there and must be dealt with. No authority yet cited to support the plaintiff-in-error's contention has held that an adjudication as to insanity can be attacked collaterally on any such ground."

Replying to the learned counsel for defendant-in-error's allegation above: "No authority yet cited to support the plaintiff-in-error's contention has held that an adjudication as to insanity can be attacked collaterally on any such ground." We respectfully submit that neither does any authority cited to support the defendant-in-error's contention to the contrary *hold* to the contrary. *Insanity is about the least known branch of law.* It is, therefore, impossible to find authorities which touch at *any* angle, cases where *alleged* insanity is in issue.

Furthermore. This case of *Chaloner* v. *Sherman* is *an unprecedented case in the entire annals of law.*

In support of the above contention, we respectfully submit that we know of no case—short of a Chancery case, dealing exclusively with wills or infants—which has required *more* than twenty years to reach a hearing —*more than twenty years to bring in the evidence—more than twenty years for the plaintiff-in-error to have his day in Court.*

Every step in plaintiff-in-error's case makes new law.

In support of the above contentions, we respectfully submit the unusual words employed by the learned Judge Noyes, in describing said case of *Chanler* v. *Sherman,* 162 Fed. Rep., 19. To wit, 162 Fed. Rep., *supra.* "The *extraordinary relief prayed for here.*" It was, therefore, impossible to find authorities to support our contention against the legality of luring an alleged lunatic into a foreign jurisdiction for the purpose of incarcerating him as a lunatic.

By an alleged lunatic, of course, we mean a person merely accused by a private individual or group of private individuals of being insane—but who has never in any way been convicted of insanity by any sort of judicial process.

The same safeguards which the law throws around all persons in regard to criminal accusations—namely—that all persons are innocent until *proved* guilty; the law throws around all persons in regard to accusations of insanity—namely—all persons are sane until *proved* insane —*until after conviction. As the first becomes a convict* so does the *second become a lunatic—an incompetent.*

The learned counsel for defendant-in-error himself supports our view in the *following phrase*—under Point I of his said brief—to wit: *"The presumption of sanity would no doubt have taken care of the plaintiff-in-error."*

But, we respectfully submit, the soundness of our position requires no authority—beyond the authority of

logic to support. Thus. Were it a question of a regularly declared insane person the matter would bear an entirely different aspect. And there could be no possible objection to deceiving a judicially declared lunatic. But in the case at bar the conditions were utterly different. There was no question of a regularly declared lunatic, of a judicially declared insane person. *Far from it.* There was merely the question of a parcel of unscrupulous and avaricious relatives who had been estranged from the plaintiff-in-error since the time of his marriage in June, 1888; because, at the bride's request, only one member of the Chanler family received an invitation to said wedding. This led to a breach in the natural family relations between the plaintiff-in-error and the Chanlers, which is fully and graphically set forth in sundry letters received from Winthrop Astor Chanler and his wife, on evidence in the deposition of the plaintiff-in-error, mention of which is found on pp. 144-150 of appendix to this brief, which shows the intensity of the animosity thus aroused, and the ominous threat of future trouble in consequence.

LETTERS SHOWING BAD BLOOD BETWEEN PLAINTIFF-IN-ERROR AND THE CHANLER FAMILY, pp. 144-154, Trial Brief.

THE CHANLER FAMILY LETTERS.

"Rokeby,"
Barrytown, N. Y., June 23d, 1888.

(To John Armstrong Chaloner.)

Dearest Brog†:—Many thanks for your delightful letter flowing with metaphorical milk and honey.

I am so glad you are so happy, dear old boy, and that

†Plaintiff-in-error.

you find the dreaded marriage state not such a bugbear after all. I congratulate you with all my heart on your winning such a fair and noble prize in the life race, seeing how richly you deserve all happiness that may come to you. Now I am going to speak quite frankly about a matter which has been exercising us all a good deal, and whose nature you seem entirely unconscious of. Far be it from me to throw the slightest cloud across your sunshine, though in the present state of the thermometer a cloud would be rather a grateful change, for the heat is oppressive, but I don't think you realize in the least how very keenly we all felt your treating us as if we were mere outsiders to be classed with reporters and other noxious and inquisitive bipeds.

The news of your marriage was known to hundreds of people before it reached us. Aunt Caroline Astor was here on Thursday afternoon and said: "Well, I hear Archie† is being married"—we naturally poohpoohed the thing as a newspaper story. The next day the "Herald," "Times," etc., confirmed the *fait accompli*, not until Monday did we get any news from Virginia, and in the meantime, as it happened, we had a stream of visitors who could none of them fail to be surprised at our being left so totally in the dark.

Naturally *we felt very much hurt* at such neglect, poor Alida has cried her eyes out several times feeling that you do not care for her, the boys are all *vexed and affronted*. Wintie and I try to make the best of the matter, *but* for *several days we could not trust ourselves to speak of it*. Your announcement that you will stay in Virginia all summer, read aloud at table last night reopened the wound, poor Bunch's tears rolled down her cheeks into her strawberries. I think you ought to try to come up for a week at least, before

†Plaintiff-in-error.

the girls sail, I assure you the thing is worth a sacrifice. The world which you seem to care about a good deal—as who does not? has got hold of the idea that your family is not overpleased with your marriage, nothing as you know could be falser than this, but it is you who have given it this impression, it rests with you to efface it. You know, without my telling you how *warm your welcome would be here* and I think you owe it to yourselves as well as to us, to let us see you here.

Think it over well, remember how much weight and stress you always lay on duties to your family. I say no more, fearing you take me already for a tiresome old lecturer. Please understand that I write because I think it is best you should know how the land lies about Rokeby, and show you how you may make a difference, I won't say for your whole future, but certainly for several months of it by your present movements, in the whole feeling of the family. Mr. Bostwick has just returned from Baltimore, quite worn out with dodging questions as to why none of the family were present, etc., etc., and he told Wintie last night that you ought really to know how the farmers and people about here are talking at your not coming up nor having had any one down. The only way, you see, to do away with all these false impressions is for you to come up here as soon as possible.

This is not a case for quibbling arguments about insignificant "side issues," you have got yourself into this false position and you owe it to your wife and her future relations to the family to get yourself out of it. Use your own judgment as regards telling Amelie about all this, she has had enough worries and should be spared as much as possible. Give her my love—Wintie

joins me and says *he won't trust himself to talk any more on the subject.*

Very affectionately,

DAISY.

Alida sends love to you both—also give Margaret love from us all.

(From Winthrop Astor Chanler.)

"Rokeby,"

Barrytown, N. Y., June 19.

My Dear Margaret:—I have been waiting until I could control my temper before answering your letter.

If ever two people deserved a good spanking those two are Brog and you. Of course you were but as putty in his hands, and backed him up in his absurd mysteries—but still your own common sense, if no other feeling, should have told you that he was quite wrong in acting as he did. Now I suppose you are wondering what I am driving at. Wait a bit until I tell you a story.

A detachment of the British Army in India was on the march. An officer was very anxious to know whether the army was to halt the next day and asked one of the staff officers, who had once been a friend of his, about it. "I really do not know the intentions of the General" was the reply. Then says the Chronicler, returning to his tent disgusted with the airs of his former companion he was met by his servant with the information that the army was to halt the next day. "Where did you learn that?" said the officer. "Major M's (the staff officer) washerman tell me." So Major M. could tell his "washerman" that he might take advantage of the halt to blanch his linen, but he could not communicate it to an old friend; although from the

situation of the army it mattered not, in a military point of view, if the fact were known from one end of India to the other. Just read, mark, learn, etc., this parable and I think you will see how the cap fits. You could write to Mr. Morris† and tell him to be sure the "d" was left out of the name, etc., etc.—and yet you could not send one line or word to any member of your family so that we could drink the bride's health. As it happened Archie's alleged telegram never reached us.

Alida at "Tranquillity"‡ and all of us at "Rokeby" heard it from an outsider and the daily papers. Of course Brog, like Sir Andrew Aguecheek, will have fifty "exquisite reasons" for it all. He always has. *It won't make much difference now what he says.* It is all over the country that not a single member of his family knew he was going to be married so soon. That don't look well, does it? *I am glad he is where he is so much appreciated for his stock is below par up here.* I cabled the news to Bess, lest she too should hear through the papers. Alida wrote me a piteous letter today asking for news—what news can I give her? That you leave Virginia in a week? Another little point for you and Brog to digest at your leisure is this. The outcome of his sublime and fatuous predilection for mystery is that as your name was only in one paper the great majority for whom he poses think that no member of his family was present at his wedding. You can draw your inferences.

This is all I am going to say on the subject, except

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†Said Henry Lewis Morris—the Chanler Family's lawyer. See affidavit of Egerton L. Winthrop, Jr. (T. R., pp. 141, 142, fols. 272-276.)

‡The country place at Allamuchy, Hackettstown, Warren County, New Jersey, of the late astronomer Lewis Morris Rutherfurd.

that it is useless to tell Amelie anything about it. She has nothing to do with it, and need not be made uncomfortable.

Yours,

W.

(From Winthrop Astor Chanler.)

"Rokeby,"
Barrytown, N. Y., June 22, 1888.

My Dear Margaret:—On our return from Albany today, where we had dined and spent the night with Mrs. Pruyn, I found your long letter.

Your reasons for not letting us know are precisely what we all supposed them to have been. Of course, we all knew perfectly well that you wanted to send us word and that Archie would not let you. When you say that you did not consider it proper for you to discuss the matter with and differ from him we disagree with you entirely. It was your business to fight any such proceeding on his part with all your might. Particularly so when you thoroughly realized how we would feel as you say you did. In fact, every word in your letter and in Brog's to Daisy goes to confirm us in our opinion. The Rives had a perfect right to wait till after the wedding before cabling to the Col. if they so wished. They had plenty of relatives in the house to back them up in anything they chose to do—if the *Herald* is to be believed. Besides there are a half dozen ways in which Brog could have let us know the day before if he had wished. He could have written or telegraphed in French. As soon as he had had his interview with the *Herald* reporter he could have sent us word. The whole trouble is that he apparently looked upon the family in the same light as

the public—*with a strong preference for the public. I am not going to discuss the matter any further as regards the disagreeable position he has seen fit to put us all in and its result in the eyes of the world of whom he seems to stand in such dread. Nor am I going to discuss the utter fizzle of his attempt at secrecy. I will simply say that he has done the very thing of all others he should have not done under the circumstances and that he has hurt the feelings of his entire connection on this side of the water* in a way that though they may *say* nothing, *yet will make them show it for a long time to come.* In the most important epoch of his life *he has made a fool of himself* and hurt his wife in the eyes of the public. You can show him both my letters on condition that he does not tell his wife about the contents more than is necessary. I will write to him *as soon as I can talk of something else.*

Yours,

W.

P. S.—*Remember* I want you to show *both my letters to Brog.* You can leave the matter of repetition to his own judgment.

W.

(From Winthrop Astor Chanler to John Armstrong Chaloner.)

"Rokeby,"
Barrytown, N. Y., June 21, 1888.

Dear Brog:—Just a line from an outsider *to disturb the perfect bliss of Armida's garden. Ask for and read* the two letters I have written to Margaret in the name of the Rokebyites and use your own judgment about re-

peating the contents. Love to Armida—We don't want any cuttings from the *Herald* or any other of your friends the Journalists.

Yours,

W.

P. S.—The weather here is very warm, 93 in the shade today—*I wonder if you wouldn't find it cool in spite of the thermometer.*

(From John Armstrong Chaloner to Winthrop Astor Chanler.)

"Castle Hill,"

Albemarle County, Virginia, June 27th, 1888.

Dear Wintie:—I have received your note of June 21st, and I shall want an apology from you in writing, before anything further can pass between us.

Yours,

J. A. C.

Nine years later Winthrop Astor Chanler makes fully good the direful threat contained in the following sinister language—taken from his aforesaid letter of June 22, 1888. To wit: "I am not going to discuss the matter any further as regards the disagreeable position he has seen fit to put us all in; and its result in the eyes of the world, of whom he seems to stand in such dread. Nor am I going to discuss the utter fizzle of his attempt at secrecy. *I will simply say that he has done the very thing of all others he should not have done under the circumstances; and that he has hurt*

the feelings of his entire connection on this side of the water, in a way that though they may say nothing, yet will make them show it for a long time to come. In the most important epoch of his life he has made a fool of himself, and hurt his wife in the eyes of the public."

And when we add to the above the unnatural hatred of his brother—there is no other word for it, we respectfully sumbit, upon the evidence of said Winthrop Astor Chanler's acts—and when we add to the above the unnatural hatred of said Winthrop Astor Chanler for his brother—the plaintiff-in-error—displayed by his—said Winthrop Astor Chanler's—*attempt to physically assault said brother*—the plaintiff-in-error—*even though the latter was in bed and unwell at the time*—as is fully set forth in the portions cited, *supra*, of the deposition *de bene esse* of said Winthrop Astor Chanler.

As was said above, there was no question here of a regularly declared lunatic, of a judicially declared insane person. There was merely the question of a parcel of unscrupulous and avaricious relatives, who had been estranged from the plaintiff-in-error since the time of his marriage in June, 1888; who had subsequently—*one and all*—quarrelled with plaintiff-in-error because of said marriage; and, subsequently, had not scrupled to employ agents to inveigle plaintiff-in-error within the confines of the State of New York with the—on the evidence—indisputable purpose of there incarcerating plaintiff-in-error for life, and, upon the death—in the course of time—of plaintiff-in-error, of possessing themselves of plaintiff-in-error's property of largely over a million dollars in value, and steadily increasing in value.

The balance of the citation above from defendant-in-error's brief is so honeycombed with sophistry, so riddled by fallacy that it is, we respectfully submit, simply and palpably beneath serious notice. We shall, therefore, content ourselves by saying that the learned counsel

for the defendant-in-error *has put the cart before the horse in a manner unparalleled in our professional experience.*

That said learned counsel for defendant-in-error glibly dubs the plaintiff-in-error an "incompetent person" *long before any legal proceedings declaring the plaintiff-in-error a lunatic or an incompetent person had ever been had.* And this in the teeth of the aforesaid remark of said learned counsel for defendant-in-error—page five of his said brief under Point I thereof—to-wit: "the presumption of sanity" (until judicially found insane—"lawfully adjudicated" as said learned counsel puts it—page five of his said brief) "would, no doubt, have taken care of the plaintiff-in-error until such time as an answer setting up the defense should have been served." The following words would have had equal force in said sentence, to-wit. "The presumption of sanity" (until judicially found insane)—"lawfully adjudicated"—*not fraudulently lured into a foreign jurisdiction we might respectfully add* "would, no doubt, have taken care of the plaintiff-in-error until such time as he should be (as the plaintiff-in-error had *not* been) judicially found insane 'lawfully adjudicated'."

The "presumption of sanity" spoken of by the learned counsel for defendant-in-error before a party has been "lawfully adjudicated" insane, is well supported by the following remark from the learned Judge in his opinion in *Evans, Committee* v. *Johnson,* West Virginia Supreme Court of Appeals L. R. A. 737, referred to extensively on page 208, of this brief. The learned Judge says "Will it be said, in answer to this that he is insane, and that notice to an insane man will do him no good? *The response is that his insanity is the very question to be tried.*"

It will be fully shown that there never was, nor ever had been any question of the peace and quiet of the

good people of the City and State of New York being threatened by an irruption upon the part of the plaintiff-in-error. That—strange though it may sound to a New Yorker—the plaintiff-in-error much preferred life in Virginia to life in New York. That the plaintiff-in-error had proved this by relinquishing, far from reluctantly, his citizenship in the State of New York and promptly taking it up in the State of Virginia after buying the four hundred acre estate of "The Merry Mills" and fitting up its old-fashioned house as his permanent home. That plaintiff-in-error found life in Virginia so much to his liking that on the evidence of the record he gave life in New York as wide a berth as possible—only going there at long intervals for short trips and with a specific purpose as the object of each trip—as the following letter from the former proprietor of the hotel at which he stopped when visiting New York proves.

"LETTER TO PLAINTIFF-IN-ERROR FROM THE PROPRIETOR OF THE HOTEL KENSINGTON, NEW YORK (SINCE DECEASED) CONCERNING HIS INFREQUENT VISITS TO THE HOTEL (pp. 100-101 Trial Brief).

Cash Capital, $1,700,000.

John R. Bland,
President.

Geo. R. Callis,
Secretary-Treasurer.

The United States Fidelity and Guaranty Company,
Baltimore, Md.

Andrew Freedman,
Vice President,

Sylvester J. O'Sullivan,
Manager.

66 Liberty Street, New York, March 14th, 1905.

Mr. John Armstrong Chanler,
"The Merry Mills," Cobham, Va.

My Dear Chanler:

In reply to your letter requesting my views regarding your alleged former residence at the Hotel Kensington, Fifth avenue and Fifteenth street, Borough of Manhattan, City of New York, in 1896 and 1897, I beg to state as follows:

I was Proprietor of that Hotel from April 1st, 1894, to April, 1897. I do not think you ever stopped there prior to my assuming control of it. I do believe you came there solely on my account. You never were in any sense a resident guest of that Hotel. You never were any other than a transient guest. You never engaged rooms there other than by the day. Your visits there were infrequent, yet I believe you stopped there every time you came to New York while I conducted that Hotel. As a rule, you came on each year to the Horse Show, and on those visits you, of course, spent the week said Show was in progress, and I believe on one, or possibly two occasions, your visit at that season was prolonged to several weeks. Other than the Horse Show week mentioned above, my recollection is that you did not come to that Hotel more than once or twice a year, and on some of these visits your stay was only for a day or two.

I well remember having several prolonged conversations with you about some large enterprises you had on hand in North Carolina, and that almost the entire year of 1895 was spent by you in the South in the conduct of said enterprises.

You were at the Kensington during the Horse Show week in November, 1896, and *left there for the South in December.*† You *returned again in February*‡ of

†Corroborating the testimony of John Penn Morris. Pp. 16-22, Appendix.

‡Corroborating the testimony of William Kennie. Pp. 57-64, Appendix.

1897, and left in March. Of course, I could not recollect the exact dates of your arrival and departure on those visits, but I again repeat in the strongest terms possible that you never were at any time to my knowledge a resident guest of that Hotel, but were always looked upon by myself and all the attaches of the Hotel as a transient guest.

Very truly yours,
SYLVESTER J. O'SULLIVAN.

The plaintiff-in-error had no intention whatever of visiting New York for a long and indefinite period. That plaintiff-in-error's said letter to Captain Micajah Woods proves said contention where he mentions his desire for a prolonged stay in Virginia as the cause of his arranging his business affairs in New York so that he could leave the Metropolis for an extended and indefinite period. That the unscrupulous relatives of plaintiff-in-error sent out to have, and had him brought within the confines of the State of New York for an illegal, dishonest and nefarious purpose. That the peace of New York was never threatened by the presence within its borders of plaintiff-in-error. That he much preferred to live in peace and quietude in the countryside of Virginia to courting the noise and hubbub of the Metropolis. That all this talk upon the part of the learned counsel for defendant-in-error to the effect that—page 8 of his said brief—*"The State itself has a vital interest in the proper disposition of incompetent persons"*—and again page 9, ibid—*"The Court can not and will not shirk the duty which it owes the whole public of determining whether or not the person in question belongs to the class which requires supervision"* is nothing more nor less than so much sonorous buncombe upon the part of the learned counsel for defendant-in-error.

All this talk upon the part of the learned Counsel for defendant-in-error is palpably hollow—unequivocally insincere.

We respectfully submit that in place of all this absurd sophistical elaboration concerning the protection of the good people of New York from the danger of the presence of the plaintiff-in-error within that populous State's borders, it would be far more germane to the public good to protect the public from the felonious machinations of people as utterly devoid of scruple or principle, or even of natural affection as the Chanler family, male and female, are shown to be in the premises; to protect the public from the machinations of people *so resembling bandits* as do the *Chanler family.*

Continuing, the learned counsel for defendant-in-error says, page 9, *et seq.*, of said brief before the Circuit Court of Appeals:

POINT

III.

"THE LEARNED TRIAL COURT DID NOT ERR IN EXCLUDING EVIDENCE AS TO THE RESIDENCE OF THE PLAINTIFF IN 1897 AND 1899.

"The rulings excluding evidence of this character were certainly correct. The Supreme Court of New York had jurisdiction both in the Commitment Proceeding and in the Proceedings for the appointment of a Committee, whether the plaintiff-in-error was a resident of this State or not, so long as he was within the State when the Proceedings were begun, and had property here.

Finally, the fact that the plaintiff was a resident of New York, was one of the facts at issue and adjudged

in the 1899 Proceedings. The question of his residence was for the New York Court to determine, and its decision is final (*Kinnier* v. *Kinnier*, 45 N. Y. 535)."

We need not go further into the first allegation of said learned counsel—we respectfully submit—than to observe that the Supreme Court of New York never acquired jurisdiction over the person of the plaintiff-in-error for the following reasons. *First:* that he was lured within the jurisdiction of the State of New York by fraud, deceit and trickery. *Second:* that he had no notice of the 1897 Proceedings—the Commitment Proceedings. *Third:* that he was not afforded an opportunity to appear and defend at the 1899 Proceedings—the Sheriff's Jury Proceedings.

Nor need we go further into the second allegation of said learned counsel—we respectfully submit—than to observe that the 1899 Proceedings aforesaid alleged, *never had any existence in law for the reason aforesaid:—lack of opportunity to appear and defend—and that therefore no question thereat determined had any existence in law.*

Continuing, the learned counsel for defendant-in-error says, page 10, *et seq.* of his said brief before the Circuit Court of Appeals:

POINT

IV.

"THE LEARNED TRIAL COURT DID NOT ERR IN EXCLUDING ANY OF THE EVIDENCE OFFERED TO SHOW FRAUD IN THE VARIOUS PROCEEDINGS RESULTING IN THE ORDER OF COMMITMENT OF 1897 AND THE ADJUDICATION OF INCOMPETENCY OF 1899.

"An examination of the offers of evidence made by the plaintiff-in-error, the questions asked and excluded, and indeed, of the excluded evidence itself as it appears in the depositions which were marked for identification, will show that the alleged fraud complained of consisted in the giving of testimony *alleged to be false, in the affidavits* upon which the Commitment was had, and in the evidence upon which the plaintiff was adjudged incompetent in 1899. *The alleged conspiracy appears to have* been a *conspiracy of the relatives of the plaintiff-in-error* to deceive the Court by such *perjury* into *deciding as it did decide. Such fraud,* however, if proved is *no basis for a collateral attack* upon an adjudication. The question whether the testimony, given in support of one side of the case, is or is not true is one of the questions *necessarily* adjudged in *every* litigation. In the case at bar the question whether the alleged perjurious testimony was true was *necessarily* adjudged by the Supreme Court of the State of New York in finding the plaintiff-in-error incompetent. This Court could not determine whether or not the testimony in question was perjured without trying over again the *very same issue which* the New York Supreme Court decided when it made the orders complained of. In accordance with these principles it is well settled that the fact that a judgment is procured by false testimony does not open it to collateral attack."

(Counsel for defendant-in-error then cites *U. S.* v. *Throckmorton,* 98 U. S., 61, and says the said case shows:)

"That the fraud which will invalidate a judgment or open it to a collateral attack must be *extrinsic,* or of such a character as prevents the party defrauded from presenting his case or some essential element of it to the Court. None of the offers to prove in the case at bar

suggests that any fraud of this character was practiced upon the plaintiff-in-error."

Replying to which, we respectfully submit the following concerning the case of *U. S.* v. *Throckmorton*, 98 U. S.

We have more than once been forced to draw this honourable Court's attention to the proneness to sophistry, so brazenly exploited by the learned counsel for defendant-in-error. It would, indeed, be difficult to find more appallingly palpable, brazen sophistries than the following *supra*—so palpable as to be beneath the notice of an honest, truthful and logical lawyer—more than to held them forth for the view of this learned Court in all their nakedness. To wit. "The question whether the testimony given in support of one side of the case is or is not true is one of the questions *necessarily* adjudged in *every* litigation."

Among the present group of fallacies set forth with such assurance by the learned counsel for defendant-in-error the above is, we respectfully submit, surely the captain jewel in the carcenet. For if what said learned counsel for defendant-in-error asserts above were not a fallacy, where then would be the famous case of *Tovey* v. *Young*, cited by the learned Mr. Justice Miller in *United States* v. *Throckmorton*. And where would be the learned words of the Lord Keeper in the High Court of Chancery?

According to the Lord Keeper perjury can slip by the Trial Judge unnoticed.

Discussion of *U. S.* v. *Throckmorton*.

Mr. Justice Miller said:

"There is no question of the general doctrine that

fraud vitiates the most solemn contracts, documents and even judgments—in cases where, by reason of something done by the successful party to a suit, there was, in fact, no adversary trial or decision of the issue in the case. Where the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practised on him by his opponent, as by keeping him away from Court, a false promise of a compromise; or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff;—these, and similar cases which show that there has never been a real contest in the trial or hearing of the case, are reasons for which a new suit may be sustained to set aside and annul the former judgment or decree, and open the case for a new and a fair hearing. In all these cases and many others which have been examined, relief has been granted, on the grounds that, by some fraud practiced directly upon the party seeking relief against the judgment or decree, that party has been prevented from presenting all of his case to the Court. On the other hand, the doctrine is equally well settled that the Court will not set aside a judgment because it was founded on a fraudulent instrument, or perjured evidence, or for any matter which was actually presented and considered in the judgment assailed. Mr. Wells, in his very useful work on *Res Adjudicata,* says, Section 499: 'Fraud vitiates everything, and a judgment, equally with a contract; that is, a judgment obtained directly by fraud. The principle and the distinction here taken was laid down as long ago as the year 1702 by the Lord Keeper in the High Court of Chancery, in the case of *Tovey* v. *Young, Prec.* in Ch. 193. This was a bill in Chancery brought by an unsuccessful party to a suit at law, for a new trial, which was at that time a very common mode of obtaining a new trial. One of the

grounds of the bill was that complainant had discovered since the trial was had, that the principal witness against him was a partner in interest with the other side.

The Lord Keeper said: 'New matter may, in some cases, be ground for relief; but it must not be what was tried before; nor, when it consists in swearing only, will I ever grant a new trial, unless it appears by deed, or writing, or that a witness, on whose testimony the verdict was given, were convict of perjury.'" As is conclusively proved by the *originator* of the said principle —namely the Lord Keeper—the perjury of a witness "on whose testimony the verdict was given" *must be discovered and charged* not during, but *after the said trial.*

In other words, the perjury must not have been known to be perjury—and as perjury—to have been considered by the court *during said trial.* The perjured witness—in a word—gives his perjured testimony, upon which "the verdict was given," without either the Court or the other side knowing at the time of the trial that same was perjured. Thereafter said discovery is made and a new trial granted on the strength of the newly discovered perjury.

Counsel for defendant-in-error attempts to show by this very case of *United States* v. *Throckmorton,* that provided a witness has perjured himself in a given trial —and no matter that neither the other side nor the Court knew at the time of said trial that said witness *was* a perjured witness, yet, nevertheless, because the witness gave his said perjured testimony, as aforesaid, at said trial, that therefore the question of the perjury of said witness was *ipso facto* necessarily "actually presented and *considered*" in said trial *as perjury!* Whereas, the truth is the direct antithesis thereof. Namely: that said perjury, *not having been discovered* at the time of said trial, it *could not* have been "presented" at said trial.

Not having been *"presented"* if necessarily *could not* have been *"considered."*

And counsel for defendant-in-error sapiently holds that although *neither* the Court *nor* the other side *knew* at the time of said trial that it *was* perjury; that *therefore* when—*after* said trial—a *new* trial is sought upon the ground—*upon the totally new question*—of the perjury of said witness—that a new trial cannot be granted because the said perjury—*although unknown and unhinted at at said trial*—*"was* actually presented and considered" at said trial; when—in truth—*it had been neither one nor the other!*

In other words—according to the legal, mental processes of counsel for defendant-in-error—if a perjured witness, *unbeknown* to the *Court* and *other side*—perjures himself at a given trial and *"gets away with it"*—*gets the Court and other side to believe it,* that *therefore, thereafter, when* the other side *catches up with the perjurer,* and *moves for a new trial*—that, *because* the perjurer has—*unbeknown* to the *Court* and *other* side—*perjured himself successfully,* which is to say, of course, *without being caught,*—that then—according to counsel for defendant-in-error—*when* said perjurer is *"caught with the goods"*—his crooked and slick work, *when discovered,* cannot be taken into consideration by the Court—cannot be "considered"!

To conclude. The perjury of Mr. Winthrop Astor Chanler, in the Commitment Proceedings in 1897, aforesaid, is proved upon him in the cross-examination of that gentleman, by counsel for plaintiff-in-error in said Deposition *de bene esse, supra,* given by said gentleman in or about November, 1905—on file in the New York Supreme Court.

Said gentleman swore in said Commitment Proceedings—said Commitment Papers—that he had heard and

seen the plaintiff-in-error in *Chaloner against Sherman* say and do irrational things at the said plaintiff-in-error's home in Virginia. Upon the strength of which false oath "the verdict was given," and the plaintiff-in-error lost his liberty and the control of, and enjoyment of his property for years and years. Whereas in said Proceedings in 1905, *de bene esse*—as has been shown, *supra*—said gentleman admitted on the stand—under cross-examination—that he had *never* in his life been at, or in, said home of said plaintiff-in-error in Virginia —*nor* had *any* of the *other* Petitioners!

To resume. A second famous fallacy is now pushed forward by the learned counsel for defendant-in-error in the following bare-faced statement. To wit, "This Court could not determine whether or not the testimony in question was perjured without trying over again the very same issue which the New York Supreme Court decided when it made the orders complained of."

And, lastly, we have this pearl from the lips of the learned counsel for defendant-in-error. To wit, "In accordance with these principles it is well settled that the fact that a judgment is procured by false testimony does not open it to collateral attack."

And then said learned counsel has the assurance—the *verily desperate hardihood*—to bring forward this very case of *United States* v. *Throckmorton*, in support of said learned counsel's outrageous attempted assault on the Truth as well as on logic.*

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*Mr. Justice Harlan says:

In *Arrowsmith* v. *Gleason*, 129 U. S., *infra*,

"As said in *Barrow* v. *Hunton*, 99 U. S., 80, 85 (25: 407, 408), the *character of the case* is *always* open to *examination* 'for the purpose of determining whether, *ratione materiae* the Courts of the United States are in-

Continuing the learned counsel for defendant-in-error says, pages 11 and 12 of his said brief:

"The contention that the plaintiff-in-error was fraudulently lured into the State of New York in 1897 is not of this character. Such fraud, even if it resulted in the commitment of the plaintiff-in-error to an asylum, did not deprive him of the power, which in *fact he had in this instance,* if he had *chosen to exercise it,* of presenting every essential of his case to the court which adjudged him incompetent. As was pointed out by the Supreme Court of the United States in *Simon* v. *Craft,* 182 U. S., 427, an inmate of an asylum may well be perfectly free to conduct his defense in such proceedings with entire efficiency; and in the *absence of alle-*

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competent to take jurisdiction thereof. *State rules on the subject cannot deprive them of it'."* * * *

"The most solemn transactions and judgments may, at the instance of the parties, be set aside or rendered inoperative for fraud. * * * It is generally parties that are the victims of fraud." * * *

"Relief is to be obtained not only against writings, deeds and the most solemn assurances, but against Judgments and Decrees, if obtained by *fraud and imposition.* * * * Such relief being grounded on a new state of facts, disclosing * * * *imposition upon a Court of Justice."*

And in *Marshall* v. *Holmes,* Mr. Justice Harlan said: 141 U. S., *infra*:

"On the other hand, if the Proceedings are tantamount to a bill in equity *to set aside a decree for fraud* in the obtaining thereof, then they constitute an original and independent Proceeding, and according to the doctrine laid down in *Gaines* v. *Fuentes,* 92 U. S., 10 (23: 524), the case might be within the cognizance of the Federal Courts."

gation, proof, or offer *to prove* that he was interfered with, the Court will presume that he was not. If, then, there was any luring in 1897, it did not affect the 1899 Proceedings."

The hardihood displayed by the learned counsel for defendant-in-error in bringing forward a case so indisputably proving the contentions of his adversary; namely, the plaintiff-in-error, as *U. S.* v. *Throckmorton,* is almost equalled by said learned counsel for defendant-in-error's putting in the case of *Simon* v. *Craft.* For nothing could support the contentions of the plaintiff-in-error more strongly than this same case of *Simon* v. *Craft—unless* it be the aforesaid case of *United States* v. *Throckmorton.*

The case of *Simon* v. *Craft* is again brought forward by said learned counsel for defendant-in-error in support of said counsel's "Point V" in said brief. Therefore we shall touch said case but lightly under Point IV of said counsel's said brief and treat said case at length in replying to said counsel's "Point V."

Said learned counsel for defendant-in-error starts out—we respectfully submit—with two fairly large fallacies where he says: "The contention that the plaintiff-in-error was fraudulently lured into the State of New York is not of this character." To which we respectfully submit that *were it not for the luring there would have been no* 1897 *Proceedings at all*—for the simple reason that there could not have been—for there would have been no plaintiff-in-error to be falsely imprisoned and perjured into "Bloomingdale" had the plaintiff-in-error not been "fraudulently lured" as said learned counsel for defendant-in-error deftly phrases said felonious actions of his allies and backers, the Chanlers.

Continuing, said learned counsel for defendant-in-error says:

"Such fraud, even if it resulted in the commitment of the plaintiff-in-error to an asylum, did *not* deprive him of the power, which in fact he *had* in this instance, *if* he had chosen to exercise it, of presenting every essential of his case to the Court which adjudged him incompetent."

Strange though it sounds, there is not one solitary word of truth in the above sonorous sentence from the learned counsel for defendant-in-error. As will be shown when we come to consider said counsel's next Point—"Point V"—(1) "Such fraud—(*did*) deprive him of the power." (2) "Which in fact he had (*not*) in this instance. (3) "(although) he *had chosen* to exercise it, of presenting every essential of his case to the Court which adjudged him incompetent."

Merely as a sign of *bona fides* upon our part to shortly make good the proof of the above, we now respectfully submit that plaintiff-in-error was bed-ridden at the time of the 1899 Proceedings on the testimony of the Medical Superintendent of "Bloomingdale"—Dr. Samuel B. Lyon, *supra*—had been so for three weeks previous to the said Proceedings which were held twenty miles from his cell in "Bloomingdale"—and—lastly—that plaintiff—*on the record—was neither present at, nor represented by counsel at said Proceedings. Whereas Mrs. Yetta Simon—the alleged lunatic in Simon* v. *Craft,* who, by the way, we respectfully submit, was on the evidence and *indisputably* a *bona fide* lunatic from the incipiency of the case of *Simon* v. *Craft—was represented at her trial*—by a guardian *ad litem.*

Concluding his "Point IV" the learned counsel for defendant-in-error says, "As was pointed out by the Supreme Court of the United States in *Simon* v. *Craft,*

182 U. S., 427, an inmate of an asylum may well be perfectly free to conduct his defence in such Proceedings with entire efficiency; and in the absence of allegations, proof, or offer to prove, that he was interfered with, the Court will presume that he was not. If then there was any luring in 1897, it did not affect the 1899 Proceedings."

The great difference between the case of *Simon* v. *Craft* and *Chaloner* v. *Sherman* is, we respectfully submit, summed up in the above lines. *There was no proof or offer to prove that fraud was employed against Mrs. Simon at any stage of the case.* Whereas fraud shows its foul head from the very incipiency of *Chaloner* v. *Sherman*.

There was no proof or offer to prove that Mrs. Simon was not insane from the incipiency of Simon v. *Craft.* Whereas indisputable evidence—documentary—in the shape of a letter of several thousand words in length written by plaintiff-in-error in his cell within about one hundred days of his arrest and incarceration in "Bloomingdale" to his late counsel, the late Captain Micajah Woods, Commonwealth's Attorney of Albemarle County, Virginia—plaintiff-in-error's home county at said time—in evidence and known as Exhibit 6—*whereas indisputable evidence—documentary and otherwise—is in evidence in Chaloner against Sherman to prove the unimpeachable sanity of the plaintiff-in-error from his birth.*

There was no proof or offer to prove the slightest sign of a conspiracy against Mrs. Simon. Whereas there is indisputable evidence—documentary—in the shape of the letters of June, 1888, from members of the Chanler family* to plaintiff-in-error in evidence *supra* pp. 417-

*As well as the letter from said Stanford White to Princess Troubetzkoy, indexed in Index of Exhibits, Appendix, as *Exhibit C.*

424, of this brief, breathing out threatenings and mutterings of trouble to come, *is in evidence in Chaloner* v. *Sherman.*

There was no proof or offer to prove the slightest ill-feeling towards Mrs. Simon. *Whereas indisputable evidence—documentary—in the shape of the allegation in the plaintiff-in-error's letter aforesaid to Captain Micajah Woods of a violent altercation with Winthrop Astor Chanler—the Chief Petitioner in the* 1897 *Proceedings—is in evidence in Chaloner against Sherman to prove that not a vestige, shred or atom of natural affection exists between a solitary member of the Chanler family, male or female, and the plaintiff-in-error.* That all and sundry the Chanler family dislike the plaintiff-in-error heartily, and lose no opportunity to show said dislike; and that the sole and only interest said Chanler family take in plaintiff-in-error is a *strong and ever present desire to circumvent the wishes and last will and testament of the plaintiff-in-error* in order to *cheat* the *Universities of Virginia and North Carolina* out of the fortune of a *million dollars or more* the plaintiff-in-error has deeded, besides leaving in his will, *to the said Universities.*

There was no proof nor offer to prove that the party or parties in whose custody Mrs. Simon was, was or were inimical to her. Whereas indisputable evidence is in evidence in *Chaloner against Sherman,* that the Medical Staff of The Society of The New York Hospital at "Bloomingdale," as well as the "Board of Governors" of said Private Insane Asylum had every reason to feel chagrined at the freely uttered threats of the plaintiff-in-error to publicly expose them and their methods so soon as he should obtain his liberty.

Lastly, there was no proof nor offer to prove that the party or parties in whose custody Mrs. Simon was, was or were pecuniarily interested in or benefited by retain-

ing her in custody. Whereas indisputable evidence—on the cover of the Commitment Papers themselves—shows that *the proprietors of The Society of The New York Hospital were charging the plaintiff-in-error the outrageous mulct of one hundred dollars per week* for a two-roomed cell with bath attached—a thirty dollar per month or so—Irish keeper—while charging him extra on every possible pretext—*and he a vegetarian and strict abstainer from all alcoholic beverages.* While the mulct aforesaid amounted—including the aforesaid "extras"—to the formidable sum of *twenty thousand dollars,* more or less, at the end of the nearly four years the plaintiff-in-error was illegally and falsely imprisoned in The Society of The New York Hospital at White Plains, Westchester County, New York.

Continuing, the learned counsel for defendant-in-error says, pages 12, 13, 14 and 15 of his said brief. Since this "Point V" of said learned counsel for defendant-in-error's brief is by far the longest, most important and most elaborately argued point in his brief, we shall give said point verbatim and *in extenso.*

POINT

V.

"THE LEARNED TRIAL COURT DID NOT ERR IN EXCLUDING EVIDENCE AS TO THE PHYSICAL DISABILITY OF THE PLAINTIFF AT THE TIME OF THE 1899 PROCEEDINGS.

"The contention, set up in the Thirty-second Assignment of Error, that there was error in this regard is apparently based upon the exclusion of the offers of proof by counsel for the plaintiff-in-error (pp. 57-60,

fols. 109-113). These offers were *vastly* too broad, including matters already ruled upon and others which were clearly irrelevant and immaterial. Assuming, however, that the offer and assignment raise the question of the correctness of the ruling excluding an offer to prove that the plaintiff-in-error was unable, through physical disability, to attend the 1899 Proceedings, we will discuss the question on that basis.

"It is to be noted that nowhere in the Brief or in the Record is it questioned that the plaintiff-in-error actually received due and timely notice of the 1899 Proceeding, as appears from the record thereof, which is in evidence. *The argument is,* however, *that notice is insufficient to confer jurisdiction unless it be such as will afford the recipient an opportunity to defend,* and the *notice* in this case was *vitiated because* when he received it the *plaintiff-in-error* was confined in Bloomingdale, *was physically unable to attend the trial,* and was thus denied his opportunity to be heard. As above noted, however, it has been expressly decided by the Supreme Court of the United States, that confinement in an asylum does not, by itself, vitiate a notice otherwise duly served in such proceedings (*Simon* v. *Craft, supra;* see also Woerner on American Law of Guardianship, p. 401). These authorities demonstrate that the mere fact of detention in any asylum upon commitment, at the time notice is served and the Proceedings had, is not in itself sufficient to show that the notice did not give the alleged lunatic opportunity to be heard. They show that *in the absence of evidence* the Court will presume that opportunity to defend was afforded.

"Accordingly, to show that the Supreme Court in the 1899 Proceeding had no jurisdiction, the plaintiff-in-error would have been obliged to prove that opportunity to be heard was denied him, otherwise than by

his mere enforced residence in Bloomingdale. The only offer on this score is the offer to prove the plaintiff-in-error's physical disability at the time. This is by no means sufficient. If physical disability to attend a trial vitiates notice, how many of the judgments rendered by the Courts in ordinary civil cases would be open to collateral attack? If in any true sense an alleged lunatic who is ill and physically unable to appear when the case is called for trial is denied opportunity to be heard, when the Court tried the case without him every other litigant who is in the same unfortunate predicament is *equally* denied opportunity to be heard. No one, however, has as yet had the temerity to advance this proposition. The plain fact is, of course, that one who is physically unable to attend a trial is by no means denied an opportunity to be heard *if* he is *able* to retain and consult *freely* with counsel. The fact that the plaintiff-in-error in this case was entirely at liberty to retain and consult with counsel appears not only from the fact that he wrote long and full letters to at least one of his counsel (fol. 112, Letter printed as Exhibit 6 for Identification, fol. 305), but also from the testimony in the 1899 Proceeding (fol. 232), which shows that at the time in question he was on parole and at liberty to go where he pleased within large limits (fol. 231).

"Furthermore, even if it were true that the 'opportunity to be heard' to which a person is entitled in such cases, is an opportunity to attend in person, it is nevertheless plain that that opportunity is not denied a party who finds himself physically unable to attend, unless on discovering the situation he asks for and is refused an adjournment. One who knows that his trial is coming off at a time when he cannot attend and lets things proceed without even asking a postponement is in no position to complain. There is no suggestion in the

case at bar that the plaintiff even suggested a wish (see fol. 225) to be present or to have the trial at a later day. On the contrary, it appears from the testimony in the 1899 record that he deliberately and of his own preference refused to attend (fols. 225, 232). The utmost extent to which the offer of proof went was to proffer evidence to show that the conditions imposed upon the plaintiff-in-error by his confinement and illness may have made the conduct of his defense inconvenient. That is by no means sufficient. The Court of Appeals of New York has held in *Happy* v. *Mosher*, 48 N. Y., 313, that a sufficient opportunity to be heard was afforded by proceedings under a statute which made the giving of an expensive bond a prerequisite to the right to defend. In deciding this case the Court said that opportunity to defend is not denied, though made 'difficult, *so long* as it is *not impracticable*.'

"Moreover, as regards this subject, this Court is not in the usual position of Appellate Courts when considering exclusion of evidence. Ordinarily it has to be presumed that the excluded evidence would have shown all that the offer stated. Here, however, the excluded evidence is available, if the Court chooses to examine it, as it apparently consisted wholly in depositions covered by a stipulation (p. 154). From the plaintiff-in-error's own testimony in his colossal deposition, it abundantly appears that he absented himself from the 1899 hearing by his own choice, being free to attend and to consult counsel (Plaintiff's deposition, Vol. V, pp. 122-142). The passages referred to seem to us to demonstrate the fact so completely that no amount of evidence to the contrary could convince the Court that the plaintiff-in-error's failure to appear at the 1899 hearing was because opportunity to be heard was denied him. It is to be remembered that the plaintiff is himself a lawyer, to

whom, if sane, the importance of the 1899 Proceeding was doubtless evident.

"The above reasoning appears to cover all the special assignments of error which require any notice. A number of other questions were, however, discussed at the trial, and to meet the possibility that discussion in regard to them may lurk, undetected by us, somewhere concealed in the vast bulk of the plaintiff-in-error's brief, we feel that we should add a brief discussion of each.

"Most of those which we have not specifically discussed attack only remarks and expressions of opinion by the Court, which were not in any true sense rulings. On such utterances error cannot be assigned (*Gibson* v. *Luther*, 196 Fed., 203)."

A still further reason for giving defendant-in-error's "Point V" above is that it contains a perfect galaxy of fallacies and sophistries, whose brilliancy we would shrink from detracting from, by subtracting therefrom so much as one line.

The learned counsel for defendant-in-error says above:

"It is to be noted that *nowhere* in the Brief or in the Record is it questioned that the plaintiff-in-error actually received *due and timely notice* of the 1899 Proceeding, as appears from the record thereof which is in evidence."

The cynical audacity of the above, fights hard with its sophistry for the mastery. The allies of the learned counsel for defendant-in-error—the Chanlers—are very careful—in the Commitment Proceedings of 1897—as the Commitment Papers show—to deprive the plaintiff-in-error of what the learned counsel for defendant-in-error sonorously dubs "due and timely notice." There is neither hint nor vestige of "due and timely notice" when the plaintiff-in-error is in a physical condition to avail himself of said salutary safeguard of the law, in 1897.

But when—after two years of illegal imprisonment on a purely perjured charge of insanity—the plaintiff-in-error has so far physically—*not mentally but physically* succumbed to the terrible force of his environment, as to be temporarily suffering and bed-ridden—why then the allies of the learned counsel for defendant-in-error make considerable capital—or aim to at least—out of deigning to afford the plaintiff-in-error "due and timely notice" of a Proceeding—*intentionally set* 20 *miles away* from his cell in "Bloomingdale" and of which owing to his physical condition he could not avail himself.

Continuing, the learned counsel for defendant-in-error says, p. 13 of his Brief:

"The argument is, however, that notice is insufficient to confer jurisdiction, unless it be such as will afford the recipient an opportunity to defend, and the notice in this case was vitiated because when he received it the plaintiff-in-error was confined in Bloomingdale, was physically unable to attend the trial, and was thus denied his opportunity to be heard. As above noted, however it has been expressly decided by the Supreme Court of the United States, that confinement in any asylum does not by itself vitiate a notice otherwise duly served in such proceeding (*Simon* v. *Craft, supra;* see also Woerner on American Law of Guardianship, p. 401). These authorities demonstrate that the mere fact of detention in an asylum upon commitment at the time notice is served and the Proceedings had, is not in itself sufficient to show that the notice did not give the alleged lunatic opportunity to be heard. They show that *in the absence of evidence* the Court will presume that opportunity to defend was afforded."

We respectfully submit that the above is a mere repetition upon the learned counsel for defendant-in-error's part of what he said under "Point IV" *supra.*

Continuing, the learned counsel for defendant-in-error says:

"Accordingly, to show that the Supreme Court in the 1899 Proceeding had no jurisdiction, the plaintiff-in-error would have been obliged to prove that opportunity to be heard was denied him otherwise than by his mere enforced residence in Bloomingdale. The only offer on this score is the offer to prove the plaintiff-in-error's physical disability at the time." * * *

The above is one of the most extreme of all the erroneous statements uttered by the learned counsel for defendant-in-error. To wit. "The only offer on this score is the offer to prove the plaintiff-in-error's physical disability at the time." Whereas the plain truth is—supported by evidence documentary—such as said letter to Captain Micajah Woods—and otherwise—that the plaintiff-in-error was marooned. Was as completely shut off from contact with or communication with the outer world—when once immured in the cells of "Bloomingdale"—as tho' in the bowels of the Bastile.

He was not allowed to use the telephone. He was not allowed to send either letter or telegram until each had been read and approved by the authorities of "Bloomingdale."

Consequently it was a physical impossibility for the plaintiff-in-error to see a lawyer. It was equally an impossibility for the plaintiff-in-error even to send a letter to a lawyer outside the regular channels of the mail—which channels—as aforesaid—were barred to plaintiff-in-error's free use—it being impossible for plaintiff-in-error to send a letter to a lawyer with a view to retaining him to fight his case, *unless* plaintiff-in-error ran the risk of having the said letter taken to the said lawyer by a false and treacherous friend—by which is meant a former friend of plaintiff-in-error who since

his incarceration went over—body and soul—to the other side—*for reasons and causes best known to said false friend*—while at the same time *pretending* to be the same staunch and loyal friend of plaintiff-in-error that plaintiff-in-error had formerly supposed said false friend to be.

There were a certain number of said traitors who were permitted by the authorities of "Bloomingdale" to pass through the lines—to borrow a military phrase—for obvious reasons. To wit. To act as spies—in the interest *if not also in the actual pay*—of the *Chanler family.*

Two of said false friends were the late Stanford White, and the former law partner in New York City of the plaintiff-in-error, namely H. V. N. Philip.

This false friend so worked upon the confidence of plaintiff-in error that he entrusted him with the delivery *in person*—the going all the way to Charlottesville, Virginia—to Captain Micajah Woods aforesaid—of the vitally important letter aforesaid from plaintiff-in-error to said Woods, written July 3rd, 1897. The object of said Philip being to set said Woods against paying any attention to the prayer for help of the plaintiff-in-error as represented by said long letter. Said Philip was eminently successful. Said Philip handed said letter to said Woods with the following unique and *sole* comment. *"Do nothing in the premises without first consulting me."* This so alarmed said Woods that he did absolutely nothing towards granting plaintiff-in-error's said prayer in said letter of July 3d, 1897, to bring—in connection with the late United States Senator from Virginia, John Warwick Daniel—*habeas corpus* proceedings looking to the plaintiff-in-error's release from captivity.

The following excerpts—appendix—from the testi-

mony of said Captain Micajah Woods, at the first Deposition of plaintiff-in-error in October, 1908, at Charlottesville, Virginia—at which Deposition the interests of the other side were looked after by the learned counsel for defendant-in-error—supports our above contention, we respectfully submit, that said letter of July 3rd, 1897, was taken personally by said H. V. N. Philip to said Captain Micajah Woods.

PLAINTIFF'S LETTER OF JULY 3RD, 1897—RECEIVED IN FALL OF 1897.

Testimony of Captain Micajah Woods.

"13th Q. Did you receive a letter from the plaintiff in October, 1897?

A. I think that was about the time I received a letter. I don't remember the exact month.

14th Q. How did you get this letter?

A. The letter was brought to me by a New York lawyer by the name of Philip, Mr. Philip."

Furthermore, it should be unnecessary for us to state — we respectfully submit—that the professional caution of a practitioner of law is notorious.

"Abundant caution" is the invisible motto emblazoned on the walls of every well grounded lawyer's chambers. It is, therefore, absurd to suppose that a lawyer could, by any *possible incentive*—save the actual payment of hard cash, in advance, and in hand—which under the circumstances was a physical impossibility for the rich, but unfortunately situated plaintiff-in-error—his funds being in the hands of his false friend Stanford White, and subsequently in those of said false friend's brother-in-law, said Prescott Hall Butler, of the firm of

Evarts, Choate and Sherman, as it now exists—it is, therefore, absurd to suppose, we respectfully submit, that a lawyer imbued with the paramount caution of his profession, would for one moment—consider taking the case of the unfortunately situated plaintiff-in-error who—*before* paying said adventurous and daring lawyer his fee—must have his case *won* by said lawyer—*when said lawyer would first have his ears filled by the false as alarming statements of the emissaries of the Chanler family and the Society of The New York Hospital* (*"Bloomingdale"*) to the unequivocal effect that plaintiff-in-error was a shrewd, crafty, highly educated lunatic; who appeared normal in every particular, but who was, *upon the authority of the eminent* alienists forming the "Medical Staff" of "Bloomingdale"—in reality hopelessly—*even dangerously insane.* We respectfully submit that the word "dangerously" would insure the average lawyer's giving plaintiff-in-error's case a fairly wide berth.

It is therefore, we respectfully submit, as false as absurd to claim—as does the learned counsel for the defendant-in-error—that: "The only offer on this score (that opportunity to be heard was denied him) is the offer to prove the plaintiff-in-error's physical disability at the time."

Continuing the learned counsel for defendant-in-error says, pp. 13 and 14 of his said brief:

"This is by no means sufficient. If *physical disability* to attend a trial vitiates notice, how many of the judgments rendered by the courts in ordinary *civil* cases would be open to collateral attack? If in any true *sense* an alleged lunatic who is ill and physically unable to appear when the case is called for trial is denied opportunity to be heard when the Court *tried the case without him every other* litigant who is in the same unfor-

tunate predicament is equally denied opportunity to be heard. No one, however, has as yet had the temerity to advance this proposition."

The sophistry and fallacy of the learned counsel for the defendant-in-error herein shines resplendent. Who ever heard, we respectfully submit, of a sane and competent attorney's comparing a civil case with a criminal? *A case concerning lunacy is, in truth, a criminal case in effect. Which is to say that it concerns the same* elements as does a *criminal case;* namely, the physical liberty and control of the property of the accused. It is, therefore, in the highest degree sophistical and fallacious to attempt—as does the learned counsel for defendant-in-error—a parallel between the two.

Furthermore. In his said claim: "If *physical disability* to attend a trial vitiates notice how many of the judgments rendered by the courts in ordinary civil cases would be open to collateral attack? If in any *true sense* an alleged lunatic who is ill and physically unable to appear when the case is called for trial is denied opportunity to be heard when the court *tried the case without him*, every other litigant who is in the same unfortunate predicament is equally denied opportunity to be heard. No one, however, has as yet had the temerity to advance this proposition." As in his aforesaid claim, pp. 152-153, in his aforesaid Statement, the learned counsel for defendant-in-error again seeks to confuse the Court by his reference to procedure in ordinary civil cases. *There is absolutely no requirement "in ordinary civil cases" that the defendant be present in Court.* He may be present or absent as he chooses, or as circumstances permit, and the validity of the Proceedings, and of the judgment rendered are not affected either one way or the other.

In Lunacy Proceedings, however, we respectfully sub-

mit, *the practice is quite different. As such Proceedings involve the right of the man to his liberty, the policy of the Law,* and generally the letter of the *Law, contemplates and requires* that the alleged lunatic be personally present, although the *Statutes* quite frequently provide that his presence may be dispensed with.

The present case is one which had its origin in fraud and deception practised upon both the alleged lunatic and the Court. That fraud and deception was continuous. By means of it the falsely alleged lunatic was placed in, and confined in "Bloomingdale," *and was reduced to that physical state which prevented his personal presence in Court during the* 1899 *Proceedings. And, therefore, it was by means of that fraud and deceit that he was deprived of his opportunity to be heard* in the said 1899 Proceedings, before the Commission and Sheriff's Jury.

The parties in interest in opposition to plaintiff-in-error were the same throughout the Proceedings. They were guilty of the fraud under which, plaintiff-in-error, a citizen of the sovereign State of Virginia, was induced to leave that Commonwealth and go to New York City within the territorial jurisdiction of the Court, which it was their intention to use *for their fraudulent purpose; namely, for plaintiff-in-error's incarceration; and for the stripping of plaintiff-in-error of his property. They continued the practice of that fraud through the various stages of Procedure under the New York Lunacy Law, to, and including the hearing before the Commission and the Sheriff's Jury; when, by reason of plaintiff-in-error's physical disability, brought on by their fraudulent acts, it was impossible for him to be present.* Fraud practised upon a Court which is conducting a Hearing in Lunacy—that fraud being for the purpose of inducing the Court to dispense with the

personal presence of the alleged lunatic before the Jury, and *actually resulting* in the Court so dispensing with his presence—*should* be held by this learned Court, we respectfully submit, and *will* be held—we confidently believe—on the authority of *United States versus Throckmorton, supra, to vitiate the entire Proceedings.*

Said learned counsel for defendant-in-error says: "The only offer on this score is the offer to prove the plaintiff-in-error's physical disability at the time."

But this is not the only offer. This is only said learned counsel's way of stating to the Court what he would have the Court construe to be the only offer. The offer really is to prove the plaintiff-in-error's physical disability at the time, *brought on by his incarceration in "Bloomingdale," accomplished by means of fraud and conspiracy, practised not only upon him, but upon every Judicial Official of the State of New York who was in any manner connected with his case.*

As has been said above—*a case concerning lunacy is in truth a criminal case in effect.*

The effect is identical—in plaintiff-in-error's case—with a conviction, on a charge, of *murder in the Second Degree*—namely, *total deprivation of liberty for life; total disfranchisement for life; total deprivation of the enjoyment* and control of his large estate;* and—what is *worse* than the *fate of a murderer, total deprivation of the disposal of his property after death.*

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*Plaintiff-in-error now enjoys an "allowance" of twenty-four thousand dollars a year—about half the income—at present, of his estate—which is constantly increasing in value. But that is by virtue of two things, to wit, his escape from capivity, *first; secondly*, by the grace of the New York Supreme Court. For while in "Bloomingdale" so far from having an allowance of twenty-four thousand a year, plaintiff-in-error did not enjoy an allowance of twenty-four cents a year—or any part thereof. Plaintiff-in-error was not—according to the rules and regulations of the New York Hospital—allowed as much as five cents a week pocket money during the four years he was there. Nor is a murderer, serving a life-sentence, allowed so much as five cents a week pocket money.

The Law *regards the substance—not the shadow of things.* If we are correct in said deduction *what*—we respectfully submit—under the Heavens *could be more closely analogous to a criminal charge in its substance —in its effect—than an Insanity charge!*

Our three authorities—upon which we base said discussion upon the nature and history of Lunacy Legislation from the year one thousand to date—are Blackstone's Commentaries, Renton—the prominent English authority, author of "The Law of and Practice in Lunacy"—and the Constitution of the United States, as well as the Constitutions of the 48 States and Territories of the United States.

We find the earliest Statute on the subject in England to be the *"Statute De Praerogativa Regis,* 17 Edw. II st. 1, A. D. 1324. Caps IX AND X" Trial Brief, p. 245. And that the practice from that day for centuries—up to 1754—was as follows: "A petition to the Lord Chancellor suggesting idiocy or lunacy in a particular person of competent age and verified by affidavit of facts to issue a writ to the Sheriff or Escheator of the *county* where *his residence was,* to try by a jury and *personal examination* of the party whether that suggestion was true or not."

Here, we respectfully submit, from the dimmest antiquity of the Common Law we find the hall mark of Criminal Procedure branding Lunacy Procedure. We find first: the Sheriff or Escheator—the latter the officer who looked after escheats—or land forfeited to the King by rebellion. The Sheriff—a strictly criminal officer—the Escheator a Politico-Criminal officer. We find *next:* the birth-right of all Englishmen, the most priceless of their political possessions, trial by jury. We find lastly: trials *non in absentia; not* as was plaintiff-in-error's, but trials face to face—confronted by his ac-

cusers. And who *are* his accusers? Men in a *foreign* State—as was the Sheriff's Jury in the 1899 Proceedings. Not—his own neighbors—in "the county where his residence was" like the cloud of witnesses to plaintiff-in-error's sanity in the Virginia Proceedings of November 6, 1901; and in the Deposition at Charlottesville, Virginia in 1908*

At this point it is necessary to point out, we respectfully submit, that it is a mistaken notion of the origin of the Law of Lunacy to suppose—as some New York State decisions hold—that the jurisdiction of the Lord Chancellor over persons of unsound mind in England was in its origin a Chancery or Equitable Jurisdiction, such as the jurisdiction over married women, for it was originally in the King as *pater patriae,* one of whose prerogatives it was to guard lunatics, idiots, etc., and take care of their lands.

Although there are several New York decisions holding that procedure in lunacy cases, being derived from the Court of Chancery, is within the power of the Supreme Court of that State to modify at its pleasure, without constitutional or common law restrictions as to notice, trial by jury, etc., these cases proceed upon a mistaken notion of the English law at the time of the adoption of the New York State and Federal Constitutions.

The accompanying authorities show the following to be the case. The jurisdiction of the Chancellor over persons of unsound mind in England was not in its origin a chancery or equitable jurisdiction such as the jurisdiction over married women, but was originally in the king as *pater patriae,* one of whose prerogatives it was to guard lunatics, idiots, etc., and take care of their lands.

*Appendix, pp. 1-120, inclusive.

STATUTE

De Praerogativa Regis 17 Edw. II. st. I., A. D. 1324.

Caps IX and X.

Cap IX.

(Concerning idiots.)

"The King shall have the custody of the lands of natural fools" (idiots) "taking the profits of them without waste or destruction, and shall find them their necessaries, of whose fee soever the lands be holden. And after the death of such idiots he shall render them to the right heirs; so that by such idiots no alienation shall be made, nor shall their heirs be disinherited."

Cap X.

(Concerning lunatics.)

"Also, the King shall provide when any (that beforetime hath had his wit and memory) happen to fail of his wit, as there are many having lucid intervals, that their lands and tenements shall be safely kept without waste and destruction, and that they and their household shall live and be maintained competently from the issues of the same; and the residue beyond their reasonable sustentation shall be kept to their use, to be delivered unto them when they recover their right mind; so that such lands and tenements shall in no wise within the time aforesaid be aliened; nor shall the King take anything to his own use. And if the party die in such estate then the residue shall be distributed for his soul by the advice of the ordinary."

This prerogative was *exercised* by the *King* through his chancellor, not *qua* Chancellor, *but merely* as a ministerial officer or *agent*. The right and duty to act for the King *could have been* delegated *to any other* Crown officer.

The *royal prerogative in regard to lunatics might be delegated to other great officers of State,* 4 Bro. C. C. 233. *An instance is recorded* of the *warrant having been given* to the *Lord High Treasurer,* 2 Dick. 553.

The *true* source of the Chancellor's power in cases of lunacy, idiocy, etc., *is always recognized* by the *English* courts, is *mentioned* by Blackstone, and *was applied* in *Sherwood* v. *Sanderson,* 19 Ves. Jr., 280.

Lord Eldon, Chancellor (18-5) at p. 285 said: "This application (for costs made by the petitioners in an unsuccessful proceeding to declare Kitty Sherwood lunatic) considered first as made in the lunacy alone is made to the Lord Chancellor *not as Chancellor,* but as the person having *under the special warrant of the crown* the right to exercise the *duty of the crown* to take care of those who cannot take care of themselves. The *application* has therefore *no concern* with *anything* passing in the *Court* of Chancery, *but is made to the person holding the Great Seal,* to whom the Crown has usually thought proper to vest this jurisdiction, *as it would be made to any other person having that authority.*"

The Lord Chancellor "or Lord Keeper (whose authority by statute 5 Eliz. Ch. 18, is declared to be exactly the same) is with us at this day created by the mere delivery of the King's Great Seal into his custody * * * is the general guardian of all infants, idiots and *lunatics;* and has the general superintendence of all charitable uses in the kingdom. *And all this over and above* the vast and extensive jurisdiction which he exercises in his *judicial capacity* in the court of chancery; where-

in, as in the exchequer, there are two distinct tribunals; the one ordinary, being a court of common law; the other extraordinary, being a court of equity * * * In this ordinary, or legal, court is also kept the *officina justitiae* out of which all original writs that pass under the great seal, all commissions of * * * bankruptcy, idiocy, *lunacy* and the like do issue."

Bl. Comm. Bk. III. Chap. III. pp. 641, 642.

In a note to *Ex Parte* Ogle, 15 Ves. Jr., 112, the reporter refers to the Lord Chancellor sitting in lunacy as "the great officer who administers this branch of the Crown's prerogative."

From time immemorial it was held in England that the King, and *a fortiori*, his Chancellor, *had no power* to seize the lands or person of a lunatic or idiot *without previous adjudication* of the fact of idiocy or lunacy *through the verdict of a jury founded on personal examination.*

"The Crown as *parens patriae* has by virtue of its prerogative the care and custody of the person and estate of those of non sane memory and who, from want of understanding are incapable of taking care of themselves. *This royal prerogative seems to have existed anterior to the statute of* 17 *Ed. II., called Urer., Regis.*, which is declaratory only; the date of its origin is not easy at this remote period to ascertain with certainty. *It is, however, a right which is never exercised but upon a previous office (or Inquisition) found.*"

Elmer, Pr. in Lun. p. 1 and author. cit.

In Lord Ely's Case, I Ridgw. Parl. Ca. 515 (1764), the Court charging the jury empaneled in a commission *de lunatico* said:

"In order to come at this proof (required to rebut

the legal presumption of sanity) the practice in former times was on a petition to the Lord Chancellor suggesting idiocy or lunacy in a particular person of competent age and verified by affidavits of facts to issue a writ to the sheriff or Escheator of the county where his residence was, to try by a jury and *personal examination* of the party whether that suggestion was true or not. The practice of latter years has been to try these matters under such a special commission as this upon which you have been sworn." (Pp. 520-1.)

In 1751, the Chancellor said:

"The old way was by writs directed either to the Escheator or the Sheriff; the modern way, and for a long time, is by commissions in the nature of these writs; and so it is called a writ *de lunatico inquirendo.*"

Ex parte Southcot, 2 Ves. Sen. 401.

At the common law and down to the act of 1833 (3 & 4 William IV, C. 36) the English lunacy practice was as follows:

"The question whether a person was idiot or lunatic was determined either by writ or by commission. The former procedure which was the more ancient, consisted in the issue of a writ to the *Sheriff* or Escheator of the *county* where the alleged idiot or lunatic *resided to try by a jury and personal examination* of the party whether he was idiot or lunatic or not. The writ was issued by the Lord Chancellor on a petition suggesting idiocy or lunacy, and verified by affidavits of facts, and was returnable into the Court of Chancery, and any person found idiot or lunatic in this way had a *right of appeal* to the Court of Chancery or the *King in Council.*

"In the course of time the second mode of inquiry above referred to superseded the first. Commissions were issued by letters patent under the Great Seal from

the common law side of the Court of Chancery, directed to five persons as commissioners, who, or any three or more of them, were to inquire upon the *oaths of good and lawful men* of the *county,* whether the party named in the commission was idiot or lunatic or not, and as to the extent or value of his property. The commissioners held their inquiry generally *in or near the place of abode* of the *supposed* idiot or *lunatic;* the inquisition, which was required to be made by indenture, and *sealed with the seals of twelve jurymen,* was returned into Chancery, with the commission, within a month after it was taken; and thereafter, if the verdict was one of idiocy or lunacy, the Lord Chancellor referred to one of the ordinary Masters in Chancery the matter of the lunacy, and in particular the duty of ascertaining and reporting upon the property and next-of-kin or heirs-at-law of the person so found by inquisition—questions which although included in the commission were not, in later practice at any rate, investigated by the Commissioners or their jury."

Renton. "The Law of and Practice in Lunacy, pp. 329-330. (London 1896.)

Matter of Runey Dey, alleged to be a lunatic, 9 N. J. Eq. Rep. 181 (1852). Chancellor Benj. Williamson said: "No person can be deprived of the right to manage his own affairs or of his personal liberty without the intervention of a jury, and in cases of lunacy the verdict of the jury is to be founded, as in all other cases, upon satisfactory and unexceptionable evidence submitted to their consideration."

The *verdict of the jury* in such cases, *unlike a verdict on feigned issues framed by a Chancellor* in an equity suit, *was held conclusive on the Chancellor,* and did

not merely serve to inform his conscience. If the jury decided in favor of sanity, the *Chancellor* had *no power to act further,* and the *verdict related back* and *annulled his* previous proceedings. *If the jury* found the *alleged incompetent insane,* it was a matter of *absolute right* on the *latter's part to traverse* the return and have the *issue tried the second time.*

A traverse to the *return* to an *inquisition finding* a person *lunatic* is a *right* by law, *even though* the Chancellor is *satisfied:*

Ex parte Wragg & *Ex parte* Ferne, 5 Ves. Jr. 450.

"The traverse is *de jure.* It is *no favor.* The parties apply by petition, stating that they are dissatisfied with the finding; and that stops the commission."

Per Loughborough, Ch.

Ex parte Ferne, 5 Ves. 832.

In re Farrell, 6 Dick, Ch., (N. J.) 353. (51 N. Y. Eq., 353.) 2 & 3 Edw., VI. c. 3 & 6.

(1815) *Sherwood* v. *Sanderson,* 19 Vesey Jr., 280.

"It is remembered that originally the King as *parens patriae,* had custody of idiots and lunatics and their property * * * and that it was his habit to commit such persons and property to the care of committees.

"Later, to avoid solicitations and the shadow of undue partiality in the bestowal of such offices, he became accustomed by warrant under his royal sign manual to *delegate his power* in such matters to the *Chancellor* who was the keeper of the Great Seal under which grant, by letters patent, to the *committee* was made.

"It became the practice of the Chancellor first to in-

quire into the idiocy or lunacy, and to that end to issue a commission under the Great Seal directed to persons as commissioners, who were to inquire *through a jury* as to the matter given them in charge by the commission; and *after* a return to the commission, finding idiocy or unsoundness of mind, as the case might be, and trial of a *traverse* of the *inquisition*, if the subject of the inquisition should possess sufficient intelligence to wish to traverse, to proceed to grant the custody of the person and the property of the idiot or lunatic to a *committee.*"

(Per Chancellor McGill, 1893.)

In re Farrell, *supra*, at p. 358.

If the second jury found him sane, the proceedings theretofore taken were annulled, and the Chancellor had *no power* to award *costs* out of the *alleged incompetent's* estate, having *no jurisdiction whatever* over it.

Sherwood v. *Sanderson*, *supra*.

In the matter of Clapp, 20 How. Pr. 385, *held*, if the inquisition finds the alleged lunatic sane, the Court has never acquired jurisdiction to charge the expenses on his estate. "*But after a jury has passed upon the question* and found the alleged lunatic of unsound mind, the Court upon confirming the inquisition acquires complete jurisdiction over the lunatic and his property." (P. 389.)

(Per E. D. Smith, J., 1861.)

The only instance in which the Chancellor could take charge of persons alleged to be incompetent before the question of their competency had been determined by the verdict of a jury, was where such care was necessary to preserve the person of the incompetent or the public

peace, *and in this case it was an extraordinary exercise of what we here call the police power, and limited to its precise and narrow end of preserving the person of the incompetent or the safety of the public. The interference must be temporary, pending the execution of a commission.*

TEMPORARY COMMITMENT PENDING INQUEST.

"While the rule is fully recognized that the *Chancellor can not permanently* assume the custody of a supposed lunatic's person or estate *without the verdict of a jury,* yet it has been held that he may *temporarily* interfere and take care of persons as to whom a commission has been allowed, *until* the *jury* have passed upon the case."

Barb. Ch. Pr. Bk. V, Chap. 6 (Vol. 2, p. 240.)

COMMITMENT ONLY FOR SAFE CUSTODY WHILE AWAITING TRIAL BY JURY.

"When a delinquent is arrested * * * he ought regularly to be carried before a justice of the peace * * * The justice before whom such prisoner is brought is bound immediately to examine the circumstances of the crime alleged; and to this end by statute 2 & 3 Ph. & M.; ch. 10, he is to take in writing the examination of such prisoner, and the information of those who bring him; which Mr. Lambard observes, was the first warrant given for the examination of a felon in the English Law. For at the common law *nemo tenebatur prodere seipsum;* and his fault was not to be wrung out of himself, but rather to be discovered by other means and other men. If upon this inquiry it manifestly appears that either no such crime was com-

mitted; or that the suspicion entertained of the prisoner was wholly groundless, in such cases only it is lawful totally to discharge him. Otherwise he must either be committed to prison, or give bail; that is, put in securities for his appearance, to answer the charge against him. *This commitment, therefore, being only for safe custody,* wherever bail will answer the same intention, it ought to be taken, as in most of the inferior crimes." Page 1001 Black. Comm.; Chase.

In the case of *Bryce* v. *Graham,* which came before the House of Lords, sitting as a court to hear appeals from the courts of Scotland, the *Chancellor* said, with reference to the English practice:

"The *Court itself can do nothing* except to interpose some temporary care when that temporary care is found to be necessary, and to *send the matter to a jury.*" The *Chancellor* said that it was *unquestionably the law in England* that the *Court* had *no power to take* upon itself the *care* of *any individual,* either as to his person or as to his property, *on the ground* of *insanity, without* the verdict of *a jury.*

In *Bryce* v. *Graham* (*supra*), 2 Will's 7 Shaw's App. Ca. 481 at pp. 514-515, *et seq.* the Chancellor in the House of Lords, sitting as a Court of Appeals to hear appeals from the courts of Scotland, discussing the power of the Court to appoint a curator of an alleged incompetent before a jury had passed upon his sanity said:

"The Court can do nothing except to interpose some temporary care, when that temporary care is found to be necessary, and to send the matter to a jury." p. 517 * * * after much reflection, the Chancellor could not bring himself to think "that the Crown has in Scotland

what it unquestionably has not in England, namely, the power of taking upon itself the care of any individuals either as to their persons or their property, on the ground that they are of unsound mind, without the verdict of a jury."

This was also the ancient law of Scotland.

So Elmer, Pr. in Lun. and author. cit. (*supra.*)

"The Crown as *parens patriae* has, by virtue of its prerogative, the care and custody of the person and estate of those of non-sane memory and who from want of understanding are incapable of taking care of themselves. This *Royal prerogative* seems to have existed anterior to the Statute of 17 Ed. II. called *Prær. Regis,* which is declaratory only: the date of its origin is not easy at this remote period to ascertain with certainty. It is, however, a right which is never exercised, but upon a *previous office* (*or inquisition*) *found.*"

So Lord Erskine in the Cranmer Case.

"I have no authority to act upon his liberty and his property, *except* upon a *verdict.*"

In Cranmer, *Ex parte,* 12 Vesey Jr. 445. (1806).

A commission was issued to inquire whether H. C. is a lunatic. The jury found that he was so debilitated in mind as to be unable to manage his affairs. On motion to confirm: *held,* return should be set aside and a new inquiry ordered for the failure of the jury to find a "lunatic" or not in the words of the commission. The Chancellor (Erskine) observing:

"I have no authority to act upon his liberty and his property, except upon a verdict, expressed in legal words."

Hence the jury must find on the issue of the alleged

incompetent's sanity, unambiguously; *else the court is improperly substituted for the jury.* Accordingly, the Chancellor quashed the inquisition and ordered a new one.

On the second application for a fresh commission (instead of a fresh execution of the former one, be it remembered) the Chancellor said (apparently in response to the query of counsel):

"The party certainly *must* be *present* at the *execution* of the *commission.* It is his *privilege.*"

(p. 455.)

That the foregoing is a correct statement of the origin of the powers of the Chancellor in lunacy cases is admitted in *Hughes* v. *Jones,* 116 N. Y. 67.

"The origin and history of lunacy proceedings throw some light upon the subject. It was provided by an early statute in England that "the King shall have the custody of the lands of natural fools (idiots) taking the profits of them without waste or destruction, and shall find them in necessaries, of whose fee soever the lands be holden; and after their death he shall restore them to their rightful heirs, so that no alienation shall be made by such idiots, nor their heirs be in anywise disinherited."

(17 Ed. II. Chap. 9.)

The same statute provided for lunatics or such as might have lucid intervals, by making the King a trustee of their lands and tenements, without any beneficial interest, as in the case of idiots, who were the source of considerable revenue to the crown. (*Id.* chap. 10; Beverley's case, 4 Coke 127*a*; 1 Blackstone's Comm. chap. 8, No. 18, p. 304.)

This statute continued in force from 1324 until 1863. (Ordronaux Judicial Aspects of Insanity, 4.)

The method of procedure thereunder is described by an early writer as follows: "And, therefore, when the King is *informed* that one who hath lands or tenements is an idiot, and is a natural from his birth, the king may award his writ to the Escheator or *Sheriff* of the *county where* such idiot is to inquire thereof." (Fitzherbert de Nat. Brev. 232.) The *object* of the *writ* was to *ascertain* by *judicial investigation whether* the person proceeded against was an *idiot or not,* so that the King could act under the statute, *for his right to control idiots or lunatics and their estates did not commence until office found.* (Shelford on Lunatics, etc., 14.) *Subsequently authority* was *given* to the Lord Chancellor to issue the writ or commission to inquire as to the fact of idiocy or *lunacy,* and the method of procedure was by petition *suggesting* the lunacy.

(*Id.; In re* Brown, 1 Abb. Pr. 108, 109.) It was the ordinary writ upon a supposed forfeiture to the crown, and the proceeding was in behalf of the King as the political father of his people. (*Id.;* Fitzherbert de Nat. Brev. 581.)

As the means devised to give the King his right by solemn matter of record, it was necessary before the Sovereign could divest title. (3 Bl. Com. 259; *Phillips* v. *Moore,* 100 U. S. 208, 212; Anderson's Dict. tit. Office Found.)

It was used to establish the fact upon which the King's rights depended, as in the case of an alien who would hold land until his alienage was authoritatively established by a public officer upon an inquest held at the instance of the government. Whether the basis of the action was lunacy or alienage, or otherwise, the proceeding was in behalf of the public, represented by the King. (*Id.*)

The inquisition was an inquiry made by a jury before

a Sheriff, Coroner, Escheator or other government officer, or by commissioners specially appointed, concerning any matter that entitled the sovereign to the possession of lands or tenements, goods or chattels, by reason of an escheat, forfeiture, idiocy and the like. (Chit. Prerog. 246, 250; Staunt. 55, Rappalje & Lawrence Law Dict., tit. Inquest of Office.)

"Thus the law came to us from England, and after the Revolution the care and custody of persons of unsound mind, and the possession and control of their estates which had belonged to the King as a part of his prerogative, became vested in the people, who, by an early act, confided it to the Chancellor, and afterwards to the Courts. (Laws of 1788, chap. 12, 2 Greenl. 25; Laws of 1801, chap. 30; Laws of 1847, chap. 280; I. R. S. 147; 2 *id.* 52.)

"*But while the same power was confided*, the *practice* or *method* of *exercising that power* was *not regulated by the legislature, so that, almost of necessity*, the *English course* of *procedure* was followed. (Matter of Brown, *supra.*)

"For nearly a century there was no statute authorizing any court or officer to issue a commission of inquiry, except as the right to judicially ascertain who were lunatics, etc., was implied from the acts committing their care and custody at first to the Chancellor and later to the Supreme Court. The right to judicially learn whether a person was a lunatic or not was inferred from the right to his care and custody, provided he was such. Thus it appears that these Proceedings have *always been instituted in behalf of the public*, at first *in behalf* of the *King*, as the *guardian* of his *subjects*, and *then* in *behalf* of the *people of the State*, who *succeeded* to the *rights of the King* in this regard.

"In *both countries* the *theory* of the *proceeding* was

the *same,* resting upon the *interest of the public,* as is apparent from an examination of the various statutes, and decisions upon the subject already cited. That interest is promoted by taking care of the persons and property of those who are unable to care for themselves, and, by preserving their estates from waste and loss, preventing them and their families from becoming burdens upon the public. *The inquisition is an essential step preliminary to assuming control.* It is a judicial determination that the person proceeded against is one of the class of persons whose care and custody has been *delegated to the courts* by the *public.*"

If the foregoing is correct, it follows that the phrase "due process of law" as used in the New York State and Federal Constitutions, implies the right of trial by jury before the liberty of an individual could be interfered with by the court of Chancery in the exercise of its Lunacy powers, except where the police power, in cases of furious madness, requires a temporary restraint *pending an adjudication of insanity by "due process of law."* In other words the right to trial by jury *"in all cases in which it has heretofore been used"* includes the right in Lunacy cases, *which* right the New York State Constitution provides (Art. I, Sect. 2) shall *"remain inviolate forever."* Compare Art. L, Sect. 1, of the Constitution as follows:

"No member of this State shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers."

Where crime is concerned nothing could be fairer or more equitable than the safeguards the law of all civilized countries throws around the absolute rights of the accused criminal. By what process of reasoning does it come to pass, that it is safer in this day and genera-

tion for a man to be accused of murder, arson, theft, or what not, so be that it is strictly and unqualifiedly criminal and vile in its nature, how comes it to pass nowadays, that crime is safer than insanity? How is that result obtained? How is it got at? On the charge of the vilest crime the alleged criminal is notified of the charge, summarily or otherwise, he is then allowed free and untrammeled access to counsel, and if too poor to employ counsel, the law presents him with one. Thereupon he has his day in court, protected by all the laws of evidence and procedure in the regular course of justice, being confronted with the accusation against him and the witness or witnesses thereto—and being allowed to rebut their testimony and by his counsel cross-examine them. What on the other hand is the case with the unfortunate, law-abiding citizen, accused of insanity, or incompetency?

With the honorable exception of a few States* of the United States, which give an alleged lunatic or incompetent as fair a chance for his liberty and property as an alleged criminal; with the said exception, no country of the first class today gives the said alleged lunatic or incompetent any show at all for his liberty or property.

The alleged lunatic or incompetent in said countries is summarily arrested without the slightest warning. In nine cases out of ten he does not even know that he has been "examined" as to his sanity, by alleged experts therein; as the universal rule among alleged experts in insanity, among so-called "alienists," is to grossly deceive the party they allegedly "examine," and to lie to him, and cheat him in every way possible of the truth of their occupation and errand.

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*Michigan, Mississippi, Texas, Colorado, and Washington, all afford trial by jury to an alleged lunatic.

Sometimes they come—as Dr. Moses Allen Starr came to Chanler on his alleged "examination" in March, 1897—in the guise of an oculist.

Sometimes they come in the guise of gentlemen of leisure, who have no business on earth but to amuse themselves, and whose present pressing business is to amuse the alleged lunatic.

Sometimes they come as business men, with a business proposition to advance and, after a few convivial drinks, and a few such bogus business visits, clap their unsuspecting victim into a mad-house cell.

The above are a few of the tricks of the medical trade as practiced by so-called experts in lunacy.

There are three ways in which the alleged lunatic may obtain his freedom. *First*—by a procedure *de lunatico inquirendo* before a sheriff's jury. In that event the alleged lunatic must be more fortunate than Chanler was, or he will not be able to get before that august body.

If there is the least likelihood of the alleged lunatic's desiring to go before said body, he will encounter such craft as Chanler encountered at his trial in 1899, before a sheriff's jury.

Chanler was confined in the mad-house branch of the "Society of the New York Hospital," said mad-house being falsely known in his proceedings as "Bloomingdale." Said bogus "Bloomingdale" is situated at White Plains, the county seat of Westchester. Chanler had, will he, nill he, been an enforced resident of Westchester County for over two years, from 1897 to 1899.

That would seem to give Chanler an enforced domicile in Westchester County. Such being the case it would seem only natural that any legal proceedings to inquire into his mental and physical state of being should justly be held at the Court of competent jurisdiction, nearest

his said enforced domicile. There he has been living for more than two years; there he is, therefore, more or less known; there he is to be got at and examined by the said Sheriff's Jury, provided said Sheriff's Jury is an honorable body of men, worthy of their weighty responsibility of deciding on the earthly fate, on the earthly happiness, of a fellow citizen of the United States, who is charged with no crime, whose reputation is that of a law-abiding, decent citizen, held on the innocent charge of a mental affliction. The nearest Court of competent jurisdiction to said bogus "Bloomingdale" was the Supreme Court sitting at White Plains.

All the necessary machinery of justice was at hand —at the very cell door of Chanler—to be set in motion by the Sheriff's Jury in *de lunatico inquirendo* proceedings instituted as it turned out, by the same parties, or two out of three of the same parties, who ran him in as an alleged lunatic, without notice, trial, or opportunity to be heard in 1897.

Such was the situation. Add to said situation the fact that Chanler was suffering from a nervous affection of the spinal cord, superinduced by the fearful nervous strain he had perforce undergone, for more than two years past. This said nervous affection of the spine left his mind perfectly clear—as his letters from his cell to lawyers he attempted to retain in his case duly prove—but it rendered him so physically weak, and so physically ailing that for three weeks before said *de lunatico inquirendo* proceeding in 1899, as the Medical Superintendent of "Bloomingdale" swore on the stand in said proceedings, Chanler had not only kept his cell, but kept his bed. There was no doubt, on the evidence furnished by the medical witnesses for the other side at said proceedings—there could be no possible doubt of the genuineness of Chanler's said spinal trouble, for the said

medical witnesses of the other side swore at said trial that Chanler was wearing porous plasters, and that he said they brought him relief. Now anyone who has ever worn a porous plaster knows that, unless it is worn as a counter-irritant to counteract an internal ailment, it becomes a cause of ailment in itself, and blisters and irritates the surface of the skin to such an extent as to render its presence on a person whose skin is anything short of a hide in thickness, as to render its presence on a person with an ordinary sensitive skin little short of torment.

Such being the fact, it is impossible under the circumstances, and on the evidence, to doubt that Chanler was a real sufferer from said nervous ailment, which was relieved by the irritation on the surface of the skin, set up by the said porous plaster. It being therefore proved conclusively, on the evidence of the sworn witnesses of the other side that Chanler was ill, and had been so for three weeks past, it becomes an interesting question why,—if fair play upon the part of the parties instituting the said *de lunatico inquirendo* proceedings, if fair play upon the part of Messrs. Winthrop Astor Chanler and Lewis Stuyvesant Chanler was intended when the said proceedings were brought in 1899, and whether or not these gentlemen desired to give their brother a run for his money, a chance to be examined by the Sheriff's Jury which sat on him—*why* said proceedings were not brought at White Plains.

Here was a large and spacious County Court House, awaiting Chanler within less than a mile of his cell door. Chanler, in spite of his said nervous ailment, might have been brought into Court on a stretcher that short distance. Or if that was not desired the Sheriff's Jury, or part of them, could readily and without great inconvenience, step into one of the spacious "Bloom-

ingdale" omnibusses, and without effort, be carried t
the door of Chanler's ward in "Bloomingdale." In
stead of which, what was done? The Proceedings *d*
lunatico inquirendo were held twenty miles or mor
away from Chanler's sick bed, were held in Manhattan
and at the extraordinary, the unheard of hour of fou
P. M. Why was such an hour set by the Commission fo
such a serious proceeding as the disposal of the prop
erty, freedom and happiness for life of a law-abiding
citizen of the United States?

Why but for the purpose of depriving said law-abid
ing citizen of the United States of all three, of property
of freedom and of happiness as the result proves. *First*
—At said proceedings the alleged experts in insanity o
the other side, swore two opposite ways. Said alleged
experts in insanity swore white was black. Said alleged
experts perjured themselves on the evidence—until
figuratively speaking, they were black in the face. Said
alleged experts first swore to the effect that Chanler had
nothing the matter with him. In spite of the presence
upon his person of the said porous plaster, in spite of
his being in bed upon their visit to him in 1899, and
in spite of his having been so far at least three weeks
previous to said visit. Whereupon, a question having
arisen—on the strength of said swearing—of having
Chanler brought before the Sheriff's Jury at said pro
ceedings, whereupon said question of having Chanler
brought before the Jury at said proceedings, hav
ing arisen upon the strength of said swearing, a piti
ful spectacle is produced, to wit. At once, and in
the twinkling of an eye, the three alleged experts
in insanity of the other side, proceed at once to eat
their own oaths, and in a body, swear to the exact con
trary of what they had previously sworn. For example
When they thought there was no chance of Chanler's be

ing brought before the jury, said alleged experts swore to the effect that he had nothing the matter with him and could readily come to court if he chose. So soon, however, as a chance cropped up of Chanler's being brought to court—or possibly if fair play had been intended, of a committee made up of members of the Sheriff's Jury, of a chance of said committee of the Jury's visiting and examining Chanler in his cell—so soon, however, as said chance cropped up, the said alleged experts in insanity, one and all, solemnly mounted the stand and as solemnly swore that Chanler was not able to be brought to court without detriment to him. If such a spectacle in an alleged court of justice is not open and palpable perjury, what is it? As might be imagined by anyone reading said proceedings a slight discrepancy such as perjury, however open, however palpable, passed without a hitch. Nay, more. The distinguished body sitting as the Sheriff's Jury on said occasion, not only swallowed the above palpable perjury without blinking, but on top of such a feat performed —so to speak—a juridical "stunt" of its own, by rising in the person of its distinguished foreman and protesting to the effect that it mattered not to them what condition Chanler was in, whether he was well or ill, that the only thing they desired was to cut the Proceeding short—said Proceedings did not last three hours, all told—and that to do that they were perfectly willing to consign Chanler to a living death upon their verdict that he was a madman and a fool.

As Chanler observes in his affidavit "I shan't say that the jury was bought, but I shall say that if they *had* been bought they could not have acted differently." So much for the first of the said three ways in which an alleged lunatic may obtain his liberty.

Second.—By being fortunate enough to communicate with the outside world in spite of the Cerberus-like vigilance of mad-house doctors, employees, and keepers. Under the rules of New York mad-houses, every letter that goes out from them must be inspected by the authorities of said mad-houses. What chance has an alleged lunatic to communicate with counsel?

Third.—If as fortunate as Chanler, he may escape.

DISCUSSION OF THE UNITED STATES CONSTITUTION, SHOWING CRIMINAL PROCEEDINGS AND LUNACY PROCEEDINGS ANALOGOUS IN NATURE.

As we said above. In the Proceedings in 1899 before said Commission and said Sheriff's Jury, a palpable breach of constitutional privilege was perpetrated, (1) by the Court's failure to order Chanler's production before said bodies in court; (2) failing this the Court's failure to order that said Commission as well as said jury, or, at least committees made up of members of those bodies, visit Chanler in his cell in the Society of the New York Hospital, at White Plains, for the purpose of examining him. Upon the maxim "Analogy holds good in law" how would it look to read in a Court report that the alleged burglar was pronounced by a brace of doctors as physically incapacitated from appearing in court at his trial, and that in consequence the trial went on in said alleged burglar's absence and the jury duly finding said alleged burglar guilty of the crime alleged, duly convicted said burglar, whereupon the Court duly sentenced said burglar in said burglar's absence to ten years penal servitude? By what right has an alleged burglar more right to a hearing before the Court and jury that tries him and condemns him, than an honest alleged lunatic, or an honest alleged in-

competent, before the Court and jury that *tries him* and *condemns him?* By what right has an alleged burglar more right to the enjoyment of a speedy and public trial by an impartial jury, than an honest alleged lunatic or an honest alleged incompetent? By what right has an alleged burglar more right to be informed of the nature and cause of the accusation than an honest alleged lunatic, or an honest alleged incompetent? By what right has an alleged burglar more right to be confronted with the witnesses against him than an honest alleged lunatic, or an honest alleged incompetent? By what right has an alleged burglar more right to have compulsory process for obtaining witnesses in his favour than an honest alleged lunatic, or an honest alleged incompetent? By what right, lastly, has an alleged burglar more right to have the assistance of counsel for his defense, than an honest alleged lunatic or an honest alleged incompetent? We maintain that not only is it by NO *right, but that all proceedings* before juries, or Sheriff's Juries, or before a judge, referee, or commission, are flagrantly illegal and profoundly unconstitutional when an alleged lunatic, or an alleged incompetent is declared insane, or incompetent, or both—as was the case in Chanler's case—either without having been brought before the aforesaid judge, or referee, or commission, or jury, or Sheriff's jury, or—if for any reason this is not done—a Committee made up of members of the aforesaid jury or the said Commission and Sheriff's jury have not taken the trouble to investigate the cause of the absence, from his trial, of the said alleged lunatic or the said alleged incompetent by visiting him and inquiring into it personally.

Otherwise the door to perjury and even *murder*—as indicated by the instances thereof hereafter cited in said Preface—is opened wide; otherwise said Proceed-

ings take on a farcical character analagous to proceedings at which the astral body of an alleged lunatic is sat upon by a Commission and a Jury of—*phantoms*.

Otherwise the Fourteenth Amendment to the United States Constitution would be contravened. It says, Section 1, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction, the equal protection of the laws." The right * * * *"to be confronted with the witnesses against him; to have compulsory process of obtaining witnesses in his favor; and to have the assistance of Counsel for his defense" are the "privileges"* of alleged-criminals in jeopardy—in consequence of their alleged crimes—of life, liberty, or property, according to the aforesaid Sixth Amendment to the United States Constitution. If the said "privileges" of alleged criminals are denied to honest alleged lunatics and honest alleged incompetents in jeopardy—on a charge of lunacy or incompetency—of liberty or property, or to *any person* without distinction of race, colour, honesty, or lack of honesty, intelligence, or lack of intelligence, health, or lack of health, wealth, or lack of wealth, sanity, or lack of sanity, competence, or lack of competence, in jeopardy—on any charge that entails loss of liberty or loss of property—of liberty or property, such a proceeding does *ipso facto "abridge* the privileges" of alleged criminals in the case of said honest alleged lunatics, and said honest alleged incompetents, as well as in the case of said *any person*, in contravention of the aforesaid Fourteenth Amend-

ment which says "No State shall make or enforce any law which shall *abridge the privileges* * * * of citizens of the United States."

It is therefore unconstitutional to "abridge the privileges" of alleged criminals in the case of said honest alleged lunatics and said honest alleged incompetents, as well as in the case of said *any person*. It is therefore unconstitutional to guarantee "The right * * * *to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour; and to have the assistance of Counsel for his defense,*" wherever the liberty or property of an alleged felon is at issue, and withhold them wherever the liberty or property of a law-abiding citizen, on a charge of lunacy or incompetency, is at issue, or wherever the liberty or property of said *any person*, on said any charge is at issue. If the above propositions are correct it follows: (1) that "the right * * * to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour; and to have the assistance of Counsel for his defense"—forms part of the "privileges" of alleged lunatics and alleged incompetents in jeopardy—on a charge of lunacy or incompetency—of liberty, or property; as well as of said *any person* in jeopardy—on any charge that entails loss of liberty or loss of property—of liberty or property: (2) that so forming part it cannot be abridged. Furthermore. To "abridge the privileges" of alleged criminals in the case said honest alleged incompetents, and said *any person*, is *ipso facto* to create class distinction in legal procedure in favour of alleged criminals, and opposed to said honest alleged lunatics, and said honest alleged incompetents, as well as opposed to *any person* without distinction of race, colour, honesty or lack of honesty, intelligence or lack of intelligence, health or lack of health, wealth

or lack of wealth, sanity or lack of sanity, competence or lack of competence in jeopardy—on any charge that entails loss of liberty or loss of property—of liberty or property. Such an absurd anomaly *ipso facto* upsets an equal protection of the laws, and throws more protection of the laws around the rights of an alleged criminal than those of an honest alleged lunatic, or an honest alleged incompetent, or those of said *any person*. Such an absurd anomaly is in direct contravention of the Fourteenth Amendment to the United States Constitution, aforesaid, which says "Nor shall any State * * * deny to *any person* within its jurisdiction, *the equal protection of the laws.*" It is therefore unconstitutional to create class distinction, in legal procedure, in favor of alleged criminals and opposed to said honest alleged lunatics, and said alleged incompetents, and said *"any person."* It is therefore unconstitutional to guarantee "The right * * * to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense," wherever the liberty or property of an alleged felon is at issue, and withhold it wherever the liberty or property of a law-abiding citizen, on a charge of lunacy or incompetency, is at issue, or wherever the liberty or property of said *"any person"* on said any charge, is at issue. Furthermore. If the above propositions are correct we have shown: (1) that "The right * * * to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour; and to have the assistance of counsel for his defense,"—forms part of the privileges of alleged lunatics and alleged incompetents in jeopardy —on a charge of lunacy or incompetency—of liberty or property, as well as of said *"any person,"* in jeopardy—on any charge that entails loss of liberty or loss of property—of liberty or property; (2) that so forming part

it cannot be abridged. It follows therefore that "The right * * * to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour; and to have the assistance of counsel for his defense," in the case of said alleged lunatics, and said alleged incompetents, as well as in the case of said *"any person"* is due process of law. It follows, therefore, that due process of law in said respect, touching said alleged lunatics and said alleged incompetents, as well as touching said *"any person"* is identical in said respect, with due process of law touching alleged criminals and alleged malefactors. *Concluding remarks in reply to brief of defendant in error before Circuit Court of Appeals.*

COMPARISON OF A CIVIL CASE WITH A CASE IN LUNACY

We shall now, we respectfully submit, in closing this section, give a brief instance which throws into somewhat dazzling relief the audacity, sophistry and fallaciousness of the learned counsel for defendant-in-error. Said learned counsel says, with *impudence little short of brazen,* we respectfully submit, that: "If in any true sense an alleged lunatic who is ill and physically unable to appear when the case is called for trial is denied opportunity to be heard when the Court tried the case without him, *every other litigant who is in the same unfortunate predicament is equally denied opportunity to be heard."* Let us take the civil case of a Commission Merchant in New York City sued for the defective condition of a carload of onions shipped from Flint, Michigan. The commission merchant is seized at the time of the civil suit with a nervous affection of the spine which forces him to keep his bed. He, of course, has free access to counsel. The latter draws up the Answer to the Complaint in said civil suit, and brings same to the

Commission Merchant, who signs and swears to same in bed before a Notary. Thereupon the case is called. Thereupon the case is heard and the Answer to the Commission Merchant read out in open Court. And a portion —say a bushel—of the *res gestae*—said carload of onions—whose physical condition is in dispute—duly attested—is brought into Court, and marked "Defendant's Exhibit A." The onions are found to be sound, and in a healthy condition, and the Commission Merchant wins the case.

Take now the case of an alleged lunatic whose sanity and competence are in question. In the first place he *cannot* send a sample—a bushel—as in the former instance—of the commodity whose condition is in question. *He cannot send a bushel of his brains*, and of his physical condition, to be inspected by the Court and Jury—*neither a bushel nor any measure whatsoever, less or more, than a bushel.*

Continuing the learned counsel for defendant-in-error says, page 14 of his said brief before the Circuit Court of Appeals:

"The plain fact is, of course, that one who is *physically unable to attend* a trial is *by no means denied an opportunity to be heard*, if he is able to retain and consult freely with counsel. The fact that the plaintiff-in-error in this case was entirely at liberty to retain and consult with counsel appears not only from the fact that he wrote long and full letters to at least one of his counsel. Letter printed as Exhibit 6 for Identification," (Transcript of Record, p. 156, fols. 305-340).

The learned counsel for defendant-in-error truly observes: *"If* he is able to retain and consult freely with counsel." To which, we respectfully submit, we reply: "Yes, *if*." We respectfully submit that we grieve to say that the learned counsel for defendant-in-error here once more grievously errs. Thus. "The fact that the plain-

tiff-in-error in this case was entirely at liberty to retain and consult with counsel appears not only from the fact that he wrote long and full letters to at least one of his counsel."

The idea, we respectfully submit, of calling one unique letter, got out by stealth after waiting over 90 days for an opportunity to get same out unbeknown to the authorities of "Bloomingdale"—but really not unbeknown to them since the bearer, H. V. N. Philip, was, as it turned out, a false friend to plaintiff-in-error and in reality a spy on him, in the interest of plaintiff-in-error's enemies—the idea of calling *one letter* got out under such circumstances—and the last that *was* got out until *January*, 1900—*fifteen months later*—to call this *one* letter "long and full letters" is characteristic of the learned counsel for defendant-in-error.

All of which—we respectfully submit—is more than amply supported by the heart-breaking experience undergone by plaintiff-in-error in his efforts to procure counsel to bring his case to the attention of the Courts. As the Record shows plaintiff-in-error took immediate steps—upon finding himself in "Bloomingdale"—to procure counsel. He called upon his friend the celebrated journalist, Arthur Brisbane—at that time on the New York *"World,"* and since then editor of the New York *"Evening Journal"*—for relief. The futility of plaintiff-in-error's well-meant efforts is shown by the account of his failure to secure the professional services of no less a personage than the late former United States Senator and former Governor of New York, David B. Hill, through the good offices of his aforesaid friend, said Arthur Brisbane. This is indexed—in Appendix of this Brief under the caption "Hill, Hon. David B., Connection With of plaintiff-in-error, pp. 597-601."

We desire to impress upon this learned court the fact

—we respectfully submit—that the printing of the appendix of this Brief was forced upon us by the action of the learned counsel for defendants-in-error, who misinterpreted the Record, and whose misinterpretation was followed by the Lower Appellate Court. This, of course, forced us to print the true version of that portion of the Record so misinterpreted. It thereupon occurred to us that nothing but the publication of all the more salient portions of said Record could protect us in the event of further misinterpretations. We respectfully draw the attention of this learned Court to the fact that *we* did not infringe upon the *facts* in the Record—we did not trespass upon the facts—in the slightest degree, in our Brief, to the Lower Appellate Court. That was left for the learned counsel for defendant-in-error to do as said counsel did not hesitate to do—we respectfully submit—and thereby open up and unloose the—so to speak—floodgates of plaintiff-in-error's "colossal Deposition"—to borrow the eloquent language of said learned counsel for defendant-in-error.

We respectfully submit, that it might be well to observe at this point that we based our statement on page 597, Appendix of this Brief, that said David B. Hill had been employed by the Chanler family in a case concerning the Laura Astor Delano inheritance tax before this learned Court—that we stated that, on the authority of the daily papers. *We saw said statement in the daily press.* The learned counsel for defendant-in-error avers in his Opening Speech to the Jury in the trial of *Chaloner against Sherman* before the learned Judge Holt in February, 1912—indexed under the caption "Exhibit I" in the *"Index of Exhibits,"* Appendix of this Brief—said learned counsel says, on page 831 of said Appendix, that said David B. Hill appeared against the Chanlers and not for them. It is immaterial wheth-

er said David B. Hill was employed by the Chanlers or against the Chanlers. We mention it merely to *show our good faith in the premises* in making the aforesaid statement based on what *we saw in the newspapers.* Plaintiff-in-error, we respectfully submit, was, at the time—utterly cut off from all communication with his own business affairs—dependent upon the *newspapers* for *all information regarding his own private affairs of whatever nature—as he is today.* But it is far from immaterial—the use said learned counsel for defendant-in-error attempts to make of our error—*if* error it be—by labeling it a "delusion" and *"the work of an insane man"*—to quote the exact words of said learned counsel for defendant-in-error, page 831 *ibid.* Our inference—on page 597 *ibid*—that the Chanlers had exerted influence of some sort upon said David B. Hill in order to induce said Hill to desert the plaintiff-in-error after visiting plaintiff-in-error in his cell and *hearing that foul play had been used against plaintiff-in-error—that perjury had been had recourse to—among other* things—our said inference was based, we respectfully submit—upon the hypothesis that no lawyer mindful of his oath to protect the laws would have allowed such a suspicious circumstance as the presence of foul play—the presence of perjury—to pass unnoticed—we respectfully submit—without good and *substantial* reasons.

It might be well to state—we respectfully submit—that said two letters from said Woods were dated *March* 20th, and *March* 30th, 1900. *Plaintiff-in-error, though placed on "parole" in the early summer of* 1899—*at the time of the* 1899 *Proceedings—was physically unable to walk at all until August of said year—as will be shown shortly by the Record.* He then began to walk, and kept it up until by January, 1900, he was able to walk *twelve*

miles in three hours—a distance sufficient to enable him to post letters under his "Bloomingdale" alias, the alias he employed for this purpose while in "Bloomingdale"—of "James Chilworth" at Kensico Postoffice, six miles from White Plains, wherein "Bloomingdale" is located?

The next effort plaintiff-in-error made to procure counsel was the sending of a letter to Attorney George H. Barnes, of New York City, a former classmate of plaintiff-in-error at Columbia University—asking his good offices to employ the distinguished counsel Delos McCurdy of New York City—personally known to plaintiff-in-error—besides both said McCurdy and plaintiff-in-error being members of the Manhattan Club, New York City—to bring *habeas corpus* proceedings looking to plaintiff-in-error's release from "Bloomingdale." Through no fault of his, said Barnes signally failed in retaining said McCurdy for plaintiff-in-error. The history of this is fully given in the deposition of plaintiff-in-error. It is touched on here—in the case of said Barnes—on pages 260-278 and 465-471 and 477-484 and 601-602, Appendix.

The next effort plaintiff-in-error made to procure counsel was the sending of various and sundry letters to his venerable friend the late Thomas Jefferson Miller of the said Manhattan Club, New York City—from Kensico, Westchester County, New York, aforesaid, under plaintiff-in-error's then alias aforesaid of "James Chilworth"—which alias was changed each time plaintiff-in-error fled from and into a different State of the United States in the pursuit of liberty and happiness. For instance: upon fleeing from "Bloomingdale" Thanksgiving Eve, 1900, into the State of Pennsylvania, plaintiff-in-error assumed the alias of "John Childe." At the expiration of some nine months—more or less—and upon plaintiff-in-error's departure from the State

of Pennsylvania into the State of Virginia, plaintiff-in-error assumed the alias of "James Chilton" for the six weeks, more or less—during which he was at the "Arlington Hotel," Lynchburg, Virginia, in which city of Lynchburg, the late United States Senator John Warwick Daniel had his law offices and home.

As aforesaid: The next effort plaintiff-in-error made to procure counsel was the sending of various and sundry letters from Kensico, Westchester County, New York, under plaintiff-in-error's then alias of "James Chilworth"—in order to enable plaintiff-in-error to send and receive letters unbeknown to the "Bloomingdale" authorities—by whom the sending of uncensored letters was—as aforesaid—forbidden—to plaintiff-in-error's old and tried friend, the late Thomas Jefferson Miller, of the Manhattan Club, aforesaid, by whom plaintiff-in-error had been introduced to said Delos McCurdy. Said somewhat voluminous correspondence is indexed—Appendix—under the caption: "Miller, Thomas J., Correspondence with plaintiff-in-error *re* Delos McCurdy," 457-470.

We respectfully submit that the letter from said Thomas Jefferson Miller to plaintiff-in-error dated merely "September 24th—on page 462 ibid—should have the year "1901"—affixed thereto; since said letter was in reply to one from plaintiff-in-error written in September, 1901, after plaintiff-in-error's escape from "Bloomingdale" and arrival in Virginia.

To resume. Said Thomas Jefferson Miller had done his best to induce the learned Delos McCurdy, of New York, to take plaintiff-in-error's case, but, through no fault of his—said Thomas Jefferson Miller—said Delos McCurdy did not take plaintiff-in-error's case.

The next effort plaintiff-in-error made to procure counsel—and this was plaintiff-in-error's *last* and final effort

prior to his escape in despair of procuring counsel on *any* terms while in so inauspicious a locality as a Madhouse—the final effort plaintiff-in-error made to procure counsel was a correspondence instituted with an old college classmate and brother New York lawyer—touched upon on pp. 470-472, *ibid*—Halstead H. Frost, Jr. This proved as unfruitful as all plaintiff-in-error's former correspondence in the premises. *So plaintiff-in-error concluded to escape and did thereupon, Thanksgiving Eve, 1900—escape, and fled to Philadelphia, where he remained in a private sanatorium for six months under observation at the hands of leading alienists at his own request in order to offset the nearly four years of enforced confinement in "Bloomingdale." A very few weeks of observation sufficed to prove plaintiff-in-error's entire sanity and competency; at the end of which time the alienists pronounced plaintiff-in-error sane and competent, and assured plaintiff-in-error that they would so testify at the proper time.* Whereupon plaintiff-in-error —after said six months in said sanatorium followed by six weeks in the country, in the county of Delaware, Pennsylvania—went to Lynchburg, Virginia, and prepared with his counsel, Daniel, aforesaid, and other counsel to bring forward his case of *Chaloner against Sherman.* He voluntarily prolonged his stay till the full six said months were up. In order that this learned Court may get a clear and succinct idea of plaintiff-in-error's untiring efforts to procure counsel—spread over a period of nearly four years—from March, 1897, to November, 1901, and *in the teeth of as bitter and monotonously regular disappointment,* we respectfully submit, *as the human heart ever received,* we here insert the first eight pages from plaintiff-in-error's Trial Brief, which with its Appendix, are stipulated by counsel to be treated, on appeal, as a model exhibit—see page 154, Transcript of Record.

The melancholy spectacle of lawyer after lawyer falling by the wayside as the burden and heat of temptation played upon said lawyer's professional interests, hopes or fears—the melancholy monotony of collapse—moral collapse—upon the part of this stately, sedate and eminent procession of distinguished counsel; as each softly, steadily, and stealthily went by the board, is surely—we respectfully submit—substance to employ the pen of a satirical Historian of our enlightened and allegedly aspiring times. One would suppose that the parable of the good Samaritan had never fallen upon the ears of that celebrated assemblage known as the Bar of the "Empire State." One would suppose that: "Do unto others as you would they should do unto you," was a new and strange hypothesis smacking of adventure and rashness. One would suppose—finally—that the duty of honest men to stand shoulder to shoulder against dishonest even in high places—even in the "Seats of the Mighty"—had been so swamped by the ill-smelling flood of commercialism which has—alas! in the past forty years almost changed the character—as it surely *has* changed and lowered the morality, the truthfulness and the honesty—of the old-time lawyer, down to the degraded and degenerate level of a dishonest business man; whose slogan is: *"Get rich!* Get rich—honestly if you *can*—but *get* rich *anyway*"—one would suppose—finally—that the duty of honest men to stand shoulder to shoulder against thieves in high places, thieves in High Society; thieves in High Finance—*who did their stealing, however, within the law*—had been so swamped by the sewer-like tide of commercialism, now flooding so many law offices in the Metropolis of this great Nation, that the old-time lawyer had given way to the stock broker, the stock jobber—not to say the "stock-rigger."

This language, we respectfully submit, may not ap-

pear flattering to the Legal Profession, but nevertheless said language is scarcely less flattering to said profession than the language of one of its most eminent and widely respected lights—namely Edward G. Whitaker, Esq., President of the New York State Bar Association, 1897 and 1898. Here are his words, of course, veiled and suave as the language of a lawyer naturally and always is—taken from "Four Years Behind the Bars of 'Bloomingdale,' Or the Bankruptcy of Law in New York," published by plaintiff-in-error in 1906, and of record in this case, pp. 281-285.

"Resume."

"The following editorial taken from New York *World* of January 23rd, 1898, sheds light upon said species of degeneracy:

"A STARTLING INDICTMENT."

> When President Whitaker, of the State Bar Association asserted, in a public address, that 'perjury is committed in some form or other in at least five out of every ten litigated cases,' it seemed that he had made about as startling an indictment of current morals as it was possible to make. But he went on to cap it with an amazing climax: *'If the lawyers of this State would positively discourage false swearing on the part of their own clients,* and honestly endeavor to have it punished when committed by the clients of their adversary the crime would grow suddenly less.'
>
> "Organized Society is founded upon law and held together by Statute. And law does not mean printed pages of Statute Books, but the effective operation of Courts of Justice—lawyers,

Judges and Juries working together to secure to every man his rights. One of the essentials of the true court of justice is the veracity of witnesses. If it should come to pass that men did not, as a rule, tell the truth in courts, justice would cease, and the reign of law be tottering to the fall.

"Yet this eminent lawyer tells us that nowadays false witness is borne in half of all the cases in our courts, and that the responsibility for this state of affairs is not only indirectly but also *directly upon—the lawyers!* The lawyers sitting in Legislatures are the chief makers of intentionally cloudy and ambiguous laws. The lawyers acting as 'counsel' are the chief teachers of law-defying and law-evading. And finally *by the admission of one of their eminent representatives,* they are *busy procurers of false swearing and false witness.* These are indeed amazing manifestations of the perverse spirit of destructiveness. *Here are those who ought to be the chief defenders and upbuilders of organized society toiling to bring it down in ruins."*

We now insert said portions of said address of Edward G. Whitaker, former president of the New York State Bar Association.

FROM THE TWO ADDRESSES OF EDWARD G. WHITAKER, DELIVERED BEFORE THE NEW YORK STATE BAR ASSOCIATION, AS ITS PRESIDENT, AT ITS ANNUAL MEETINGS IN 1897 AND 1898.

* * * "In closing, I desire to say a few words upon what I consider the greatest exist-

ing evil in the administration of Justice—the prevalency of the crime of perjury in legal proceedings—and to make one or two suggestions towards a partial remedy. *The profession, I believe, generally concedes that perjury is at the present time the most prevalent and dangerous crime—and the most seldom punished. It has come to such a pass that men, standing high in the community, apparently think nothing of swearing falsely to pleadings, in order to delay and defeat justice.* Most of this false swearing to pleadings is made safe and possible by the use of that *great perjury-begetting provision of our Code*—which allows allegations upon information and belief, and denials upon want of information or belief. But, in addition to swearing falsely to affidavits and pleadings, many men have no regard at all for the sanctity of an oath administered in a court of Justice. To such men the actual defeat of Justice, if it be to their pecuniary benefit, is viewed with complacency, even though affected by perjury.

I think it is the observation of judges and of practicing lawyers that the crime of perjury is committed in some form or other in at least five out of every ten litigated cases. After talking to many lawyers and judges upon the subject, this is the lowest estimate I have received. When we consider the thousands of litigated cases that are tried in our State each year, it is simply appalling. *It is an awful, but, I believe, a true confession. It is a shame on the administration of Justice and a disgrace to our nineteen centuries of Christian civilization.* Were David now alive, he might again exclaim: 'All men are liars.'

"The cause of the increase and prevalency of perjury is not hard to find. It arises largely from a weakening in the belief of future punishment, and apparent certainty of freedom from present punishment.

"The chief test of the obligation of an oath is based upon a belief in future punishment, as is evidenced by the form of the oath, and manner of its administration, as recognized by law. If, therefore, we eliminate all idea of future punishment for perjury, and inflict no present punishment, *or in other words, abolish all punishment,* both here and hereafter, it is not to be wondered at that the crime will prevail, and that men will not hesitate to commit it to further their interests. *For punishment is the great deterrent to crime.* From the year 1830 to 1896 there have only been on an average three convictions a year for perjury. And during the last two years only one conviction. *The crime is increasing, and the punishment decreasing. Unless the commission of the crime of perjury be checked, the enforcement of rights or prevention of wrongs through the administration of Justice will become a farce.*

"Can the commission of perjury be checked, and how. Most emphatically, yes, by the bench and bar; by the Judges directing investigation to be made by the District Attorney in all cases tried before them, when they have reason to believe perjury had been committed and can be proved. *And by members of the Bar simply being honest* and true to their profession. If the lawyers of this State would positively discourage false swearing on the part of their own clients, and honestly endeavor to have it punished when

committed by the clients of their adversary, the crime would grow suddenly less. It is the professional duty of every lawyer to do this. He owes it to himself; he owes it to his fellow man; he owes it to his country, *and he owes it to his God.*

"In populous Counties there should be a Department in the office of every District Attorney, devoted entirely to the prosecution of the crime of perjury, where lawyers, who desire to do their duty, could take such cases." * * *

No more striking example of one of the "five out of every ten litigated cases" mentioned by President Whitaker, in which perjury is committed, could be imagined than the spectacle thereof afforded in the documentary evidence in this case.

The desertion of plaintiff-in-error by the late David B. Hill, already touched on in pages 597-601, of Appendix of this Brief—is plainly outlined in the letter of that distinguished statesman to plaintiff-in-error, presented herewith, taken from Volume III of plaintiff-in-error's aforesaid Deposition, pages 833-835.

"Woolfert's Roost,"
Albany, N. Y., May 19, 1897.

Mr. John Armstrong Chanler,
P. O. Box 175, White Plains, N. Y.

My Dear Mr. Chanler:—

Your recent letter and telegram were both duly received. Agreeably to your request, I forward you herewith a certified copy of those commitment papers from the Lunacy Commission office here.

I had expected to be in New York earlier, but professional engagements have kept me busy here. I had

hoped to be there last week or this week, when I intended to see you personally after consultation with our mutual friend, Mr. Brisbane, but find myself unable to get away at present. It was important before taking any action that I should learn more of your situation from mutual friends. Under the circumstances by reason of my other engagements and the absence of more authentic information in regard to your situation I do not see my way clear at present to take up your case.

I regretted to learn of your illness, and trust that by complete rest you may speedily recover your health.

With kindest regards, I remain,

Very truly yours,

DAVID B. HILL.

We respectfully submit that the above letter is surely a remarkable one to emanate from a lawyer in the practice of his profession—as said David B. Hill then was—who has had a *colossal crime* shown to him by a man fully capable of satisfying his pecuniary compensation—to put it somewhat mildly—so soon as said lawyer should have had the honour, the courage, the character and the sense of Professional duty—not to speak of public duty to the administration of Justice and the support of Law and Order—not to hint at Patriotism or any of the *political catchwords so frequently sonorously falling from the rarely closed lips of the Hon. David Bennett Hill*—to set the wheels of Justice revolving and enabling the unfortunately situated plaintiff-in-error to avail himself of that—to a lawyer at least—surely reasonable, surely Constitutional privilege—to wit—his day in court. But no. Said distinguished Statesman and defender of Democratic principles for so many years in the very centre

of the arena of National politics supinely folded his hands and then swiftly and craftily "sidestepped"—so to speak—any future consequences of his aforesaid desertion of an American citizen in distress and the palpable victim of as vile, venal and bold-bloodedly malicious and nefarious a conspiracy as history holds any record of—*by creating an utterly false impression in his said letter.* Which conveys the idea that said David B. Hill has merely *heard* of plaintiff-in-error's trouble—in the first place—and that said trouble is merely a *physical* one as insignificant, in fact, as a passing physical indisposition! Said David B. Hill would never for one moment be suspected—from the perusal by a third party of said letter—of having discussed a great crime with a brother member of the Bar of New York—plaintiff-in-error—in the cell of said lawyer for some two hours, as he did (Appendix, 598), and been put thoroughly in touch with the whole nefarious situation to such an extent that all any competent attorney needed to have done would have been to verify the allegations of plaintiff-in-error; which would have resulted in convincing any competent attorney that perjury and nothing more legal or substantial than perjury, *supported by family dissensions of years' standing, was the foundation of the situation.* The reason said David B. Hill had the recklessness to write such a letter to a brother lawyer in the aforesaid almost unparalleled predicament of distress, lawlessness and reckless disregard of the least vestige of his Constitutional rights, is that said David B. Hill very well knew the reputation of "Bloomingdale" for ability to hold on to a good thing, that chance and the unconstitutional Lunacy Laws of New York—permitting permanent incarceration without either notice or opportunity to appear and be heard—to the accused—to hold on to a

good thing that chance and the Lunacy Laws of New York had obligingly brought its way. Said David B. Hill well knew the powerful coterie, the gilded clique, consisting of the proudest, wealthiest, oldest and most prominent members of Metropolitan society—in all of its various walks—Law as well as Medicine, Politics as well as Finance, Philanthropy as well as what is popularly known as the "Four Hundred"—who stood shoulder to shoulder, bank account to bank account, and reputation to reputation, a formidable—an even impenetrable—Phalanx of wealth, experience, assurance and resource—behind "Bloomingdale." Said David B. Hill very well knew that at the first sign of attack upon the fastnesses of "Bloomingdale" the practically limitless resources of said gilded Phalanx would instantly silence the timid and venal press of the Metropolis, as well as the timid and venal Bar thereof, as well as the surely not audaciously bold Public Prosecutors—either State or Federal on Manhattan Island.* Furthermore, said David B. Hill very well knew that the most prominent attorneys would be at once retained by the plaintiff-in-error's enemies, which said prominent attorneys would† fill the air with loud outcries

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*Where rich men who are socially prominent are concerned—not where East Side "gangsters" are in issue. *Vide* the utter collapse of the formerly truculent W. Travers Jerome in *re* the prosecution of the Traction Magnates after said doughty Public Prosecutor's visit to said magnates "*inner offices.*" After—as a New York City paper expressed it editorially—said Jerome: "Caught his foot in a Traction frog."

†As does said Joseph H. Choate, Jr., in his said Opening Speech—"Exhibit I," Brief, Appendix, p. 830—"*The most eminent and respected citizens of this city!*" And again, when Hon. Frederick A. Ware—in his Opening Speech, p. 820, Appendix—spoke the simple truth about "Bloomingdale," and described it as said Dr. Samuel B. Lyon did [(T. R., p. 114, fol. 224). Q. "Is the Bloomingdale Asylum for the Insane part of any Institution in this city? A. It is the Insane Department of the New York Hospital."]—adding what is vouched for by the outrageous mulct of some twenty thousand dollars aforesaid of plaintiff-in-error's money—vouched for by

against the preposterousness of asserting that men in the position—social, financial and otherwise—of the so-called "Governors" of "Bloomingdale" could under any conceivable circumstances err or go astray—as is so frequently the case with less wealthy, prominent and powerful men than said "Governors" of "Bloomingdale." Said David B. Hill well knew the proneness of the mob to admire and stand in awe of wealth and position, and therefore the tendency of the mob to disbelieve any attack upon the rectitude of the rich. Lastly, said David B. Hill well knew that plaintiff-in-error was *civiliter mortuus* in New York and would in all probability be in *articulo mortis* and *beyond*—before he emerged—or at least his corpse—from "Bloomingdale." There was, therefore, little risk in writing such a false and deceptive letter as the one said Hill did.

The extraordinary—the *monstrous, inhuman*—attitude of said Delos McCurdy towards plaintiff-in-error is not far to seek. Either said Delos McCurdy was as afraid of said embattled and gilded Phalanx—said [illegible] of "Governors" of "Bloomingdale" as, on the [illegible]ce—was said David B. Hill—or said Delos Mc[illegible] appened to be in the employ, professionally, [illegible] member of said Board of "Governors"—or was [illegible] of friendship so strong with one or more mem-

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the cover aforesaid of said Commitment Papers stating that plaintiff-in-error was charged *one hundred dollars* a week (*not counting extras*) at "Bloomingdale." Hon. Frederick A. Ware, to-wit: "'Bloomingdale,' by the way, gentlemen, is a department of the Society of the New York Hospital of this city. It is practically the Psychopathic Ward. *It is a great, big, money-making proposition.*" Said Joseph H. Choate, Jr.,—for reasons best known to himself flies to the aid of the Bastile of the "Four Hundred" and makes a desperate attempt to intimidate Mr. Ware with the following brazen, bald, braggadocio bluff. To-wit: Mr. Choate: *'You do not mean to make that statement in earnest to this jury?* Mr. Miller: It will be proved in evidence. I don't think Mr. Ware is stating anything that will not be in evidence in this case. Mr. Ware: I have not one word to retract, if your Honor will allow me to proceed."

bers of said Board, that even the spectacle of a hideous crime against the liberty, property, happiness and Constitutional rights of an American citizen and a brother member of the Bar of New York must become subservient thereto.

The amazingly peculiar attitude of plaintiff-in-error's old friend, the late Captain Micajah Woods, Commonwealth's Attorney for Albemarle County, is chargeable first, last and all the time to the poisonous venom injected into said Woods' mind by plaintiff-in-error's aforesaid false friend and former law-partner, said H. V. N. Philip. It will be remembered that said Philip succeeded in ingratiating himself into the confidence of plaintiff-in-error sufficiently to induce plaintiff-in-error to entrust to his keeping the most precious document in the world to plaintiff-in-error. To wit, the long letter aforesaid to said Captain Micajah Woods, setting forth the iniquity of the conspiracy concocted against plaintiff-in-error by plaintiff-in-error's unnatural millionaire brothers and sisters, to possess themselves of plaintiff-in-error's large and steadily growing estate. It will be remembered that said H. V. N. Philip was false to said trust and instilled a fatal doubt into the mind of said Woods by saying to him in effect: "Do nothing in this matter without first notifying me." The fatal effect of said words is readily discernible from the tenor of said Woods' letter brought to plaintiff-in-error by said H. V. N. Philip upon the latter's return from Charlottesville, Virginia, where said Woods resided. Said letter promised to give the whole matter the most careful consideration, to advise with the late United States Senator, John Warwick Daniel, of Virginia, and then to let plaintiff-in-error hear from him. We here insert said letter.

"LETTER FROM CAPTAIN MICAJAH WOODS TO PLAINTIFF-IN-ERROR, DATED OCTOBER 14, 1897; pp. 258, 259, 260, Appendix.

Q. By Counsel for Plaintiff: Mr. Chaloner, I hand you a letter and the envelope that contains it, and ask you to describe both the envelope and letter, and the circumstances under which they were received?

A. This is an envelope addressed 'John A. Chanler, Esq., N. Y. Politeness of,' name underneath blotted out by me for fear that the asylum authorities would get hold of it. This letter was received by me, as a pencil note in blue pencil indicates, made under the signature of the writer in the following words 'About three, Saturday afternoon October 16th, 1897. J. A. C.' This is a letter that I received from the late Micajah Woods, the Commonwealth's Attorney of Albemarle County, Virginia. I was in 'Bloomingdale' (falsely so called), The Society of the New York Hospital, White Plains, and reads as follows:

'Charlottesville, Va., October 14, 1897.

In the left hand top corner appears the following in print:

'Micajah Woods,
Attorney at Law,
Commonwealth's Attorney.'

'John Armstrong Chanler, Esq.,

My Dear Sir:—'

'Mr.' and the name that follows has been blotted out by me, and the remainder of the letter reads as follows:

'has this day delivered to me your sealed communication, containing enclosures. I assure you I will give the whole matter the most careful consideration. I will advise with the gentlemen you refer to and will then let you hear from me. I am now engaged in trial of important cases in court and will be so engaged during the next week.

With my best wishes and sincere regards,

Sincerely your friend,

MICAJAH WOODS.'

This is the reply to the letter just offered in evidence, which was sent by me to Captain Woods by a special messenger to Charlottesville on or about the 13th of October.

By Counsel for Plaintiff: We file this letter and envelope in evidence, and ask that the same be marked for identification and made a part of the evidence in this case.

Said letter and envelopes are marked 'Plaintiff's Exhibits 39 and 39-a.'" * * *

We respectfully submit that we have not overdrawn the situation in describing the treacherous words of said H. V. N. Philip as having had a "fatal effect" upon said Captain Micajah Woods' pledged word—as set forth in said letter, dated October 14th, 1897, to plaintiff-in-error. For not a line came to plaintiff-in-error until in the early part of the year 1900, plaintiff-in-error wrote said Captain Woods.

We now insert letters from and to said Captain Woods to plaintiff-in-error under the latter's then alias aforesaid of James Chilworth from Kensico, Westchester County, New York—some six miles from White Plains.

LETTERS PASSING BETWEEN CAPTAIN MICAJAH WOODS AND PLAINTIFF-IN-ERROR IN 1900.

From "Bloomingdale," 473-476, Appendix.

By the Witness: The next letter is numbered "(I)." This contains two letters from the late Captain Micajah Woods, Commonwealth's Attorney for Albemarle County, Va., one dated "Charlottesville, Va., 20 March, 1900," addressed to "Jas. Chilworth, Esq., Kensico, N. Y.," which I now read:

"My Dear Sir:—

Yours received, I scarcely know what to do or advise in your case. I am so constantly engaged here both day and night in my business, that I have been unable to go to N. Y. to consult with certain friends of yours as to what course to pursue. It is certain that some prominent friend of yours in N. Y. could serve you more efficiently than I could, as I am a stranger to the people there and not familiar with the N. Y. procedure in such cases. I would suggest that you communicate with James Lindsay Gordan, Asst. Dist. Attorney, New York City; he is an old friend of yours—on the ground, and familiar with the influences that will have to be exercised to restore you to liberty and the exercise of your rights.

"I certainly sympathize with you in your situation, and sincerely wish I could do something for your relief.

"My people are all well. With kindest regards, I am

Sincerely yours,

(Signed) MICAJAH WOODS."

Then my reply in blue pencil to the same, to Captain Micajah Woods, dated March 26, from White Plains,

"The Society of the New York Hospital," White Plains, N. Y., March 26th, 1900," which I now read:

"Hon. Micajah Woods.

"My Dear Captain:—

"Yours of March 29th to hand. I am very much obliged to you for replying to my previous note so promptly. I fully comprehend the difficulties surrounding your position. The gentleman you suggest I should employ in my case is unavailable. I have, however, other lawyers in view. I have just written one of them in relation to my case and made an appointment for one meeting secretly. You will readily understand the importance to me and my case of my letter to you dated July 3rd, 1897, and its enclosures, to-wit: a certified copy of my commitment papers and a page from "The Quick or the Dead." I have a rough penciled copy of the said letter, but it is not in shape for ready reference or easy legible reading. As this letter contains a complete and exhaustive history of my case, written when the events were fresh in my mind, you will easily see its importance to me in giving a complete and succinct recital of the events which led to my arrest and what followed, to my lawyers. I, therefore, enclose a special delivery stamp, which is almost as sure as a register stamp, to insure the safe arrival of the aforesaid vitally important documents to myself. Please mail them to *James Chilworth, Kensico, Westchester Co., New York.* I hope before long to have the pleasure of calling on you in Charlottesville and laughing over the predicament in which I am at present. In the meantime, please let the strictest secrecy clothe everything I have written you.

"Hoping to hear from you by return mail, and with sincere regards.

Sincerely yours,
"JOHN ARMSTRONG CHANLER."
(The original signature is in ink.)

Then another letter from the said Captain Micajah Woods, dated "Charlottesville, Va., 30 March, 1900," which I now read:

"My Dear Friend:—

"Yours received. I have mailed to you this morning the documents you wish. The paper you wrote is clear, strong and logical, and will be of immense service to your friends and attorneys in N. Y.

I do earnestly hope your efforts to secure relief will be successful; you must let me know the progress you make in this line, and advise me of the name or names of your N. Y. Attorneys, and at the proper time, if I can possibly leave here, I will go on and confer and co-operate with them.

"With my best wishes and kindest regards, I am
Sincerely yours,
(Signed) MICAJAH WOODS."

"Jas. Chilworth,
(J. A. C.)
Kensico, P. O.,
Westchester Co., N. Y."

All of which shows that I was doing my best to get out of "Bloomingdale," by legal means; that I had no idea whatever of escaping; that I wanted to get out on *habeas corpus* proceedings. The first use I made of my liberty when I could go outside of bounds by permis-

sion of Dr. Lyon was to enter into correspondence with lawyers looking to my release from "Bloomingdale" by legal process, and I worked from March, or rather, earlier than that—I wrote a letter which in the hurry of the Proceedings now, owing to the fact that the case must be ready by the preliminary call of the January calendar, 1912, I have not time to find that first letter, to which this one of Capt. Micajah Woods' dated 20, March, 1900, is a reply—but it was on or about the latter part of January, 1900, that I first wrote to Captain Micajah Woods. This correspondence is fully described in "Four Years Behind the Bars," and this missing link is very fully described—this letter which I do not find now—this first letter that I wrote.

By Counsel for Defendant: The same objection.

By Counsel for Plaintiff: I now file the letters just referred to by Mr. Chaloner, and ask that the same be marked for identification and made a part of the evidence in this case. The said exhibits are marked 'Plaintiff's Exhibits No. 155, No. 155-a and No. 155-b.'

By Counsel for Defendant: The introduction of these exhibits excepted to for the reasons heretofore stated."

The fatal effects of said H. V. N. Philip's aforesaid treacherous words are apparent—we respectfully submit—in the two foregoing letters from said Captain Woods to plaintiff-in-error. *When it is borne in mind that said Captain Woods had ignored the telegram sent him by said H. V. N. Philip, prior to the* 1899 *Proceedings before the Commission-in-Lunacy and Sheriff's Jury aforesaid* (page 456, Brief, Vol. II), additional proof—of the deadly effect of said H. V. N. Philip, we respectfully submit—will be found.

We now come to the last phase of the amazingly peculiar attitude of said Capt. Micajah Woods towards plaintiff-in-error. This is indicated in said Captain Woods'

failure to state frankly on the stand in the 1908 Deposition of plaintiff-in-error in Charlottesville, Virginia, in reply to counsel *that he knew of his own knowledge* that the late John B. Moon, attorney and counsellor of Charlottesville, Virginia, represented the late Prescott Hall Butler, the falsely alleged Committee of plaintiff-in-error in the Virginia Proceedings, November 6th, 1901, in the then County now Circuit Court of Albemarle County, at Charlottesville, aforesaid. Since he—*said Captain Micajah Woods—knew of his own knowledge that said John B. Moon had for a long time—for some two years—represented said Prescott Hall Butler in Virginia.* That in the first place said John B. Moon had been appointed the Guardian *ad litem* for plaintiff-in-error in what are known as the *Louisa County Proceedings*—at the Court House at Louisa in the County of that name—in the State of Virginia, September 20th, 1901—and found on page 650 of Trial Brief by plaintiff-in-error, printed in 1905; fully gone into further on in this Brief. On the 20th day of September, 1901, counsel for plaintiff-in-error—Hon. Armistead C. Gordon, of Staunton, Virginia, Hon. Frederick Harper, partner of Senator Daniel—aforesaid—among whom was said Captain Micajah Woods—appeared in the Louisa Circuit Court, aforesaid, and obtained a stay in Proceedings then pending—and at bar—looking to the payment of some thirteen hundred dollars to said John B. Moon as the Guardian *ad litem* of plaintiff-in-error; the same being the proceeds of the sale of "Hawkwood," an estate in Louisa County—bought on a mortgage by plaintiff-in-error in 1894.

That plaintiff-in-error's said counsel—among whom was said Captain Micajah Woods—stated to the Court that plaintiff-in-error was *not* dead, as was supposed, but had appeared that day in Charlottesville, and been interviewed by representatives of leading New York

City papers there, thus breaking the mysterious silence which had shrouded plaintiff-in-error's footsteps from the day he escaped from "Bloomingdale," Thansgiving Eve, 1900, to that day. That neither was plaintiff-in-error insane. That plaintiff-in-error had spent six months in voluntary confinement in a private Sanatorium in Philadelphia, under the observation of alienists of the highest professional standing in the country. That said alienists' opinions would be read in court. That a Petition by a neighbor of plaintiff-in-error's—by name, Cary Ruffin Randolph—asking for a judicial investigation of plaintiff-in-error's sanity as an escaped lunatic had been that day filed in the County Court of Albemarle County at Charlottesville, and that said case would be heard at the approaching term of said Court, to wit, the October term. That, therefore, the said counsel prayed the learned Court to suspend the present Proceedings until after the October Proceedings aforesaid, in the Albemarle County Court, could take place. Whereupon and providing that said Proceedings found the plaintiff-in-error sane and competent, that then, and in that event, the said thirteen hundred dollars should be paid over to plaintiff-in-error's counsel for plaintiff-in-error, and not to said Guardian *ad litem*, said John B. Moon.

Whereupon the said learned Court granted the prayer of counsel for plaintiff-in-error. Whereupon on January 25th, 1902, said learned Court turned over said thirteen hundred dollars to said Captain Micajah Woods, charging him to make certain payments therefrom before handing the residue to plaintiff-in-error. To wit. "That Micajah Woods, attorney for John Armstrong Chanler be, and hereby is, authorized to withdraw from the papers of this cause the certificate of deposit of the People's National Bank of Charlottesville, Va., dated

the 17th day of June, 1901, for the sum of $1,344.58 and collect the same less $148.21, which he shall deposit to the credit of the cause—being the net surplus balance remaining on hand unexpended, from the proceeds of the sale of the Hawkwood estate in this cause. Said Micajah Woods, attorney as aforesaid—*shall pay to John B. Moon the sum of* $250, *being fee due said Moon and his associates for services rendered in connection with the defense and protection of said Chanler's interests in this cause, in which said Moon acted as guardian ad litem,* and he shall account to the said Chanler for the residue of said certificate of deposit. J. E. Mason, Judge of the Circuit Court of Louisa County."

The appearance of counsel for plaintiff-in-error at Louisa as aforesaid, was the first intimation said John B. Moon had that plaintiff-in-error was alive, and not dead, as the New York City newspapers were in the habit of from time to time surmising. Thereupon said John B. Moon requested said Captain Woods to communicate with his fellow counsel and get their consent to a continuance from the October to the November term of the Albemarle County Court. Thereupon said counsel consulted with plaintiff-in-error and the said request of said John B. Moon was granted. Whereupon the aforesaid examination into the sanity of plaintiff-in-error by the Judge of the County Court of Albemarle County was continued until the November term of said Court. In the opening address of said Captain Woods—in the Virginia Proceedings on file in this case—to the Judge of said Court—November 6, 1901—the following language appears on the record as coming from said Captain Woods to said Court. To wit: "Your Honour is aware that this petition was prepared and it was expected that it would be filed

at the last term of the Court, but, owing to suggestions made, and especially the suggestion made by counsel for Committee of Mr. Chaloner (said John B. Moon), the petition was not filed at the last Court, but it was understood that it would be heard today, and we are here today to have the matter investigated."

As aforesaid the last phase of the amazingly peculiar attitude of said Captain Micajah Woods towards plaintiff-in-error is indicated in said Captain Woods' failure to state frankly on the stand in the 1908 Deposition of plaintiff-in-error that he knew of his own knowledge that (A) said John B. Moon represented the late Prescott Hall Butler—the falsely alleged Committee of plaintiff-in-error—in the Virginia Proceedings, November 6th, 1901. *That (B) said Captain Micajah Woods—old and wary counsel as he was—allowed himself to be inveigled into making such an absurd statement—coming as it did from a lawyer of the professional standing of said Captain Micajah Woods—upon cross-examination as the following: "2nd Q. by Counsel for defendant: 'And no representative of the Committee appeared upon the hearing of the case in November, 1901? A. No, sir.'"* Said John B. Moon did not take part in the hearing of the case aforesaid, *but he was present in Court until plaintiff-in-error left the stand.* Said John B. Moon refrained from cross-examining plaintiff-in-error and left the court room so soon as plaintiff-in-error left the stand.

We shall presently insert *said Louisa County Proceedings; the testimony aforesaid of said Captain Micajah Woods at plaintiff-in-error's Deposition in* 1908; *and a portion of plaintiff-in-error's testimony thereat describing his purchase of the "Hawkwood" Estate aforesaid.* The said Louisa Proceedings and the aforesaid testimony of said Captain Micajah Woods are of

great importance in establishing the absolute and perfect regularity of the aforesaid Virginia Proceedings of November 6th, 1901, under the laws of that State. Since Captain Micajah Woods, aforesaid, is *admitted by* the learned counsel for defendant-in-error, *Joseph H. Choate, Jr.*—who took part in the said Deposition—*to be an expert on Virginia law and practice;* for a note in said Deposition of 1908—found page 124, Vol. II of this Brief says as follows: "*Note*—It is conceded that the witness (said Captain Micajah Woods) is qualified as an expert to testify and no objection is raised on that ground." Furthermore. The defendant-in-error attacks said Virginia Proceedings—claims that no notice was given the other side when the said Virginia Proceedings of November 6, 1901, were instituted and also that said Proceedings were collusive and void. See 162 *Fed. Rep.* aforesaid, to wit: "The Defendant —(the defendant-in-error)—*sets up that the Virginia decree was obtained by collusion and is void.*" Whereas notice of said Proceedings was *ipso facto* served on the other side September 20th, 1901, when plaintiff-in-error's counsel appeared at the Court House in Louisa and gave notice in the hearing of said John B. Moon, the then Guardian *ad litem* of plaintiff-in-error, that the Virginia Proceedings had that day been instituted by the aforesaid Petition of said Cary Ruffin Randolph, praying for an examination into the sanity of plaintiff-in-error by the Judge of the County Court of Albemarle County; and that said case would come on for hearing at the October term of the Court. Whereupon said Louisa County Proceedings of September 20th, 1901, were continued indefinitely, to await the decision in said Virginia Proceedings in the County Court of Albemarle County. Whereupon said *John B. Moon requested the continuance of said Virginia Proceedings*

from the October term of said Court till the November term thereof. Which request was granted by plaintiff-in-error and his counsel. *We, therefore, respectfully submit, that it does not lie in the mouth of defendant-in-error to assert in the teeth of the above recorded evidence that his side did not receive notice of a Proceeding which was postponed one calendar month at his predecessor's—said Prescott Hall Butler's—request!*

Particularly since said Captain Micajah Woods—then *President of the Virginia State Bar Association*—and *acknowledged*—as aforesaid by *said Joseph H. Choate, Jr.*, to be *"qualified as an expert to testify" upon the Virginia law and practice* (*supra*)—particularly since said Captain Micajah Woods testified in said 1908 Deposition of plaintiff-in-error at Charlottesville, Virginia —page 128, Vol. II of this Brief—as follows: "A. Under the Statute under which this Proceeding was instituted there is no provision, and was no provision, for giving notice to any person except the party suspected of being insane, and in investigations under the section of the Statute which I have recited, and under investigations before justices touching the sanity of a person, there is no law requiring notice to be given to the next of kin or the parties holding the estate of the party suspected or any part thereof.

47th Q. Under the law in Virginia, then, it is not necessary to give notice to anyone except the alleged incompetent person, is that the effect of your answer?

A. Yes, sir."

So much for the conduct of the only three lawyers plaintiff-in-error was able to communicate with during the nearly four years he was a prisoner in "Bloomingdale"—to wit—the late Governor David Bennett Hill; Delos McCurdy, and the late Captain Micajah Woods, Commonwealth's Attorney for Albemarle County, Vir-

ginia, from 1870 until the day of his death; besides being President of the Virginia State Bar Association for the year 1908-9. The fact that said Captain Micajah Woods died within a year—more or less—of the date of his said testimony sheds some light upon said testimony—his memory evidently was failing rapidly.

Furthermore corroborative proof that said postponement of the Virginia Proceedings was at the request of said John B. Moon representing the other side, is to be found in the two following letters from plaintiff-in-error's then counsel, Hon. Armistead C. Gordon and Frederick Harper, of Daniel and Harper, aforesaid, found on pages 447-449, Volume II of this Brief.

LETTERS *RE* NOTICE GIVEN OTHER SIDE OF 1901 PROCEEDINGS, pp. 447, 448, 449 Appendix.

By Counsel for Plaintiff: Mr. Chaloner, I hand you a couple of letters enclosed in an envelope—will you please describe them?

(By Counsel for Defendant: We make the same objection to comment on these letters and their introduction, or not being shown to be material to this issue.)

A. This letter is marked in blue pencil by me, "9-27-04" and has in blue pencil, "*Re* Hon. John B. Moon, representing the other side in the November 6, 1901, Proceedings." It is addressed to me in the handwriting of the Hon. Armistead C. Gordon, then of counsel for me in the 1901 Proceedings aforesaid, and is addressed, "John Armstrong Chanler, Esq.; Cobham, Albemarle County, Va.," and postmarked "Staunton, September 27, or 27, (September is hardly legible), 1904, and the letter is dated September 27, 1904, Staunton, Va., and reads as follows:

"John Armstrong Chanler, Esq.,
Cobham, Va.

"My Dear Mr. Chanler: I wrote you on the 23rd inst. I have just received the enclosed letter from Mr. Harper. With it I hand you copy of mine to him. Capt. Woods, to whom I wrote on same case as to Mr. Harper, has not yet replied.

"Please pardon my slowness. I have been unusually busy.

Sincerely, your friend,
"ARMISTEAD C. GORDON."

Here follows the enclosed copy referred to by the said Hon. Armistead C. Gordon, of his letter to Fred Harper, a partner of the late Jno. W. Daniel, United States Senator from Virginia.

"Fred Harper, Esq.,
Lynchburg, Va.

"Dear Mr. Harper:—

"In a recent letter from Mr. John Armstrong Chanler, whose case against Mr. T. T. Sherman as Committee is now pending in the Circuit Court for the Southern District of New York, he requests me to ascertain from you:

"1. From whom did the knowledge of the request of Mr. Chanler's New York Committee, or of his brothers that the hearing on his sanity before the Albemarle Court be postponed, come to you?

"2. From whom did the proposition that he should go North in person to meet 'the other side,' come to you and upon whose authority was this proposition made?

"In reply to these questions from Mr. Chanler I wrote him a short time ago that my recollection was that the request for an adjournment of the hearing in Charlottesville, came to me *through* Capt. Woods *from Mr. John B. Moon, as counsel for and on behalf of 'the other side'*—either the then committee, Mr. P. H. Butler, or Mr. Chanler's brother; and that it was Judge Van Wyck's proposition through you that Mr. Chanler should go North.

"Mr. Chanler wishes especially to know now from you if I am correct as to the last named statement, and if so, what was the date of Judge Van Wyck's letter, and how soon thereafter were Messrs. Evarts, Tracy & Sherman, informed that Judge Van Wyck's proposition was declined by Mr. Chanler's attorneys in Virginia. You can doubtless get all this from your file.

"I will forward your reply, when received, to Mr. Chanler.

"With kind regards for yourself and for Major Daniel, I am,

"Very truly yours,"

Attached is the original letter from Mr. Fred Harper, of Daniel and Harper, to Hon. A. C. Gordon, which has as its heading—

"DANIEL & HARPER,
"Jno. W. Daniel, Fred Harper.
"Attorneys at Law, Lynchburg, Va."

and is dated Sept. 24th, 1904, and reads as follows:

"Hon. A. C. Gordon,
Staunton, Va.

"My Dear Mr. Gordon:—

"Replying to your favor of the 23rd instant, I beg to

say that an examination of our files discloses the fact that *continuance* of the *Proceedings in Charlottesville* were *had at the suggestion of Mr. Moon, representing Mr. Butler.* The reason of Mr. Moon's request was that Mr. Chanler's family *desired* an *opportunity* to be *present at the hearing.*

"As to the second matter, a letter from *Judge Van Wyck* to us, under date of *November 2d,* 1901, contained the suggestion that Mr. Chanler go to Philadelphia to submit to an examination *for the satisfaction of his family.* This proposition was made to Judge Van Wyck by *Mr. Evarts, representing the family.* In a letter which we wrote to Judge Van Wyck, under date of November 4th, 1901, we advised him that we thought the suggestion 'unreasonable.' So far as our files show, that was the last said in correspondence about Mr. Chanler's proceeding North for an examination by physicians *chosen by his family.* Trusting that this information will be satisfactory to you.

"Major Daniel is in the office and joins me in best wishes to you. I am,

"Very truly yours,

"(Signed) FRED HARPER."

* * * * * * *

We now insert said Louisa County Proceedings.

Geo. W. Morris, Trustee v. *John Armstrong Chanler,* (copies of Decrees.)

VIRGINIA:

At a Special Term of the Circuit Court for the County of Louisa, continued and held at the Court House thereof on Tuesday, the 22nd day of May, 1900.

Present, the Hon. John E. Mason, Judge of this Court.

Geo. W. Morris, Trustee, Plaintiff.

v.

John Armstrong Chanler, a person of unsound mind, George Perkins, Trustee, and Julia M. Morris, in her own right and as Executrix of Richard O. Morris, dec'd., Defendants.

F. W. Sims, who had been at Rules, held in the Clerk's Office assigned as *guardian ad litem for said insane defendant John Armstrong Chanler,* having declined to act, *John B. Moon, a discreet and competent attorney at law is assigned as such guardian ad litem for said insane defendant,* with leave to file his answer to the plaintiff's bill, which is filed accordingly and the plaintiff replies generally thereto; and it further appearing that said Chanler has been also duly proceeded against in the mode prescribed by law as to non-resident defendants by order of publication published and posted as the law directs and which has been completed for more than fifteen days, and the unrecorded deed between Richard O. Morris and wife and the said Chanler, dated November 3rd, 1894, a copy of which is exhibited with the bill, together with the contract between the parties on which said deed was based dated September 17th, 1894, being this day produced and filed by said Perkins, trustee, by leave of Court.

IN VACATION

Geo. W. Morris, Trustee,

vs.

J. A. Chanler, and Others.

This cause came on this day to be heard in vacation, pursuant to the decree of March 22nd, 1901, upon the

papers formerly read and the affidavit of *John B. Moon, Guardian ad litem of the insane defendant, John Armstrong Chanler,* this day filed, and upon the copy of the Record and judicial Proceedings of the New York Supreme Court of the County and State of New York in the matter of the said John Armstrong Chanler, an alleged incompetent person, also this day filed, which Record and Proceedings are duly attested and exemplified in the mode prescribed by law for their admission as evidence in the Courts of this State and show that the said Chanler was by the said Supreme Court of the State of New York on the 23rd day of June, 1899, duly adjudged a lunatic and person of unsound mind; and the report of George Perkins, trustee, dated May 4th, 1901, and was argued by counsel; on consideration whereof it appearing to the Court that the decree of sale entered in this cause at the Special May Term, 1900, of this Court was entered by the consent of the said *Moon, as guardian ad litem of the said Chanler,* in so far as the said decree prescribed the terms upon which the Hawkwood lands, in the Proceedings mentioned, should be sold by the trustees, Geo. W. Morris and Geo. Perkins, who were directed to sell said lands, but by inadvertence there was an omission to expressly recite therein that the same was entered with the consent of the said guardian *ad litem,* in so far as it varied the terms upon which the deed of trust upon the said lands prescribed a sale, thereupon on motion of said guardian *ad litem,* and by his consent, now given, as shown by his endorsement on this decree, it is now ordered by the Court that said decree entered at the May Special Term, 1900, be, and the same is hereby, corrected, with respect to the said omission, so as to expressly declare and show, with like effect as if expressly recited in said decree

when entered, that the said decree was entered by consent of the guardian *ad litem* as aforesaid.

And it further appearing to the Court that the said modification of the terms of sale prescribed in said deed of trust was to the interest and advantage of all parties interested in the said land, and that the said J. A. Chanler was shown to have been duly adjudged a person of unsound mind by a court of competent jurisdiction, the Court doth adjudge, order and decree that the sale set forth in the report of the trustee, George Perkins, filed March 22nd, 1901, be, and the same is hereby, now finally ratified, approved and confirmed in all respects; and the said George Perkins, trustee, is directed to proceed to carry into effect the provisions of the decree entered in this cause on March 22nd, 1901.

And the Court doth further adjudge, order and decree that unless within ten days from this date, possession of the Hawkwood lands in the Proceedings mentioned, be delivered to the purchaser, Geo. H. Browne, then the clerk of this Court shall, upon the application of said Browne or his counsel issue a writ of possession requiring the Sheriff of Louisa County to forthwith deliver possession of said lands to said Browne, it appearing that notice of the application to the Court for the awarding of said writ has been given to Julian Morris.

And the said Trustee, George Perkins, is directed, after paying costs as heretofore ordered to pay over all monies now or hereafter coming into his hands from the sale of Hawkwood to the Executors of Mrs. Julia M. Morris, in the deed between him and John Armstrong Chanler, dated November 3rd, 1894, in the Proceedings referred to, until said debt, as set forth in the plaintiff's bill shall be fully paid, and the remainder of the purchase money he shall hold subject to the order of the Court.

J. E. MASON.

May 11, 1901.

The foregoing decree is this 11th day of May, 1901, hereby certified to the Clerk of the Circuit Court of Louisa to be by him entered of record as the law directs.

J. E. MASON.

VIRGINIA: In Louisa Circuit Court Clerk's Office, May 13th, 1901.

The foregoing Vacation Decree was this day received in said office and entered of record as the law directs.

Teste:

W. R. GOODWIN, *Clerk.*

(Endorsed on decree.)

"We consent to this decree and agree that the Court shall enter the same in vacation without further notice to us.

JOHN B. MOON, *G'd'n Ad litem, For J. A. Chanler.*

GEO. PERKINS, *Trustee.*

R. L. GORDON,
W. E. BIBB, } *For G. H. Browne.*
G. W. MORRIS."

At a Circuit Court for the County of Louisa, begun and held at the Court House thereof on Friday, the 20th day of September, 1901.

Present, the Hon. John E. Mason, Judge of this Court.

Geo. W. Morris, Trustee,

vs.

J. A. Chanler & Als.

This day the Petition of Prescott Hall Butler, as Committee of the estate of John Armstrong Chanler was,

by leave, filed in pursuance of notice published in the Daily Progress, a newspaper published in Charlottesville, Virginia, once a week for four successive weeks, prior to this date, as prescribed by law, which Petition prays that the said Committee may be authorized to collect the fund involved in this cause belonging to the estate of J. A. Chanler, as well as to sue for, recover and receive all money and personal property belonging to said John Armstrong Chanler in Virginia; also by leave of the Court the answer to said Petition which is asked to be read as a cross-bill in this case, signed by John Armstrong Chanler by counsel, in which it is alleged that said Chanler is, and has been a sane man, and as such is entitled to control and manage his own estate, is filed; which answer, Petition and cross-bill is accompanied by sundry exhibits also filed therewith.

On consideration whereof and of the papers formerly read, and the final report of George Perkins, Trustee, dated August 16, 1901, this cause was this day heard upon the said report, and was argued by Counsel. And the Court, approving said report, which is sustained by proper vouchers, and to which there is no exception, doth confirm the same in all respects:

And the Court, without passing on any question in said Petition and pleadings, doth by consent of Counsel make this a vacation case to be heard in vacation by consent of counsel on any new pleadings or evidence that may be filed within the ensuing ninety (90) days. And any decree that may be, by consent of counsel to a hearing in vacation, entered by the Court in vacation shall be as valid and effective as though entered in term time, it being understood that such hearing in vacation shall only be at such time and place as counsel shall agree upon; and leave being reserved to any party in interest to file any proper exception, demurrer, answer

or plea to either of said Petitions within the next ninety (90) days.

J. E. MASON.

IN VACATION.

George W. Morris, Trustee,
against
J. A. Chanler and Others.

This cause came on this day to be heard in vacation, by consent of Counsel, in pursuance of the provisions of the decree entered herein on the 20th day of September, 1901; upon the papers formerly read and also upon the supplemental Petition and application of P. H. Butler, former Committee of J. A. Chanler, under order of the Supreme Court of the State and County of New York, filed at December, 1901, together with the exhibit therewith, of the Record of the Proceedings had in the Supreme Court of the State of New York on the 19th day of November, 1901, filed December 13th, 1901, from which it appears that the said P. H. Butler has been relieved and removed as Committee of J. A. Chanler, by the order of the said Supreme Court of New York for the County of New York, and that his powers as such Committee have ceased, which petition further prays that the application and petition filed by him at the September term, 1901, of this Court be discontinued and dismissed; *also upon the Transcript of the Record of the Proceedings had in the County Court of Albemarle County, Virginia, at its November term,* 1901, *in the matter of the Petition of C. Ruffin Randolph, filed in said Court under the provisions of Section* 1698 *of the Code of Virginia, alleging that said J. A. Chanler, a resident of Albemarle County, had been adjudged and*

confined as a lunatic in an Asylum in New York and that he was suspected of being insane, and praying said County Court to examine into his state of mind and determine whether a Committee of his estate and person should be appointed and it appearing from said certified Proceedings that said County Court of Albemarle, a Court of Record having jurisdiction in the premises, did by its order, entered on the 6th day of November, 1901, adjudge and decree as follows:

"The said Court having heard and considered the evidence of the witnesses produced, both medical men and other citizens; and having considered the several medical opinions filed touching said Chanler's mentality, and having examined the said J. A. Chanler, is of the opinion that said John Armstrong Chanler is a sane man, capable of taking care of his person and managing his estate, therefore the Court doth adjudge that there is no occasion for appointment of a Committee of his person and estate:"

Which said Record of said County Court of Albemarle, filed in this cause on 13th December, 1901, is duly certified and attested by the Clerk of said Court; and this Court having read and considered the Transcript of the Proceedings of said County Court of Albemarle County, to which are attached copies of the evidence and exhibits adduced before said Court, which evidence and exhibits were duly filed in this cause on the 13th of December, 1901, *and* this cause was argued by counsel, *upon consideration thereof the Court doth order that the Petition and Application of said P. H. Butler, Committee as aforesaid, filed in this cause at September term,* 1901, *of this Court stand discontinued and dismissed* for the reasons stated in his supplemental Petition filed at December Rules, 1901, *and the Court doth further adjudge, order and decree, inasmuch as*

John Armstrong Chanler has been adjudged and declared to be a sane man, capable of taking care of his person and estate, by the County Court of Albemarle County (of which County said J. A. Chanler is a resident) that Micajah Woods, Attorney for John Armstrong Chanler be, and is hereby, authorized to withdraw from the papers of this cause the certificate of deposit of the People's National Bank of Charlottesville, Va., dated the 17th day of June, 1901, for the sum of $1,344.58, and collect the same, less $148.21, which he shall re-deposit to the credit of the cause, said deposits having been made by George Perkins, Trustee in this cause, and being the net surplus balance remaining on hand unexpended, from the proceeds of the sale of the Hawkwood estate in this cause. Said Micajah Woods, Attorney as aforesaid, out of the proceeds of said certificate of deposit, less the $148.21 aforesaid, shall settle any unpaid costs in the cause, *and shall pay to John B. Moon the sum of* $250, *being fee due said Moon and his associates for services rendered in connection with the defence and protection of said Chanler's interests in this cause in which said Moon acted as guardian ad litem,* and he shall account to the said Chanler for the residue of said certificate of deposit.

J. E. MASON.

January 25, 1902.

The foregoing decree is this 25th day of January, 1902, hereby certified to the Clerk of the Circuit Court of Louisa County to be by him recorded as the law directs.

J. E. MASON,
Judge of the Circuit Court of Louisa Co.

525

VIRGINIA: In Louisa Circuit Court Clerk's Office, January 28th, 1902.

The foregoing Vacation decree was this day received in said office and entered of record according to law.

Teste:

W. R. GOODWIN, *Clerk.*

I hereby certify that the foregoing are true copies of the five decrees, entered on their respective dates, in the suit of *Geo. W. Morris, Trustee* v. *John Armstrong Chanler, et als.*

P. B. PORTER,
Clerk of Louisa Circuit Court, Va.

STATE OF VIRGINIA,
County of Louisa, to-wit:

I, John Rutherfoord, Judge of the Circuit Court of the County of Louisa, hereby certify that P. B. Porter, whose name is signed to the foregoing certificate, is, and was at the time of signing the same, clerk of the said Court, duly qualified; that his attestation is in due form of law; that his signature is genuine, and all his official acts entitled to full faith and credit.

Given under my hand this 5th day of June, 1916.

JOHN RUTHERFOORD.

STATE OF VIRGINIA,
County of Louisa, to-wit:

I, P. B. Porter, Clerk of the Circuit Court of the County of Louisa, do hereby certify that John Rutherfoord, whose name is signed to the foregoing certificate, is, and was at the time of signing same, Judge of the said Court, duly qualified.

Given under my hand and seal of said Court this 5th day of June, 1916.

P. B. PORTER,
Clerk.

(Seal.)

* * * * * *

As well as the testimony aforesaid of said Captain Micajah Woods at plaintiff-in-error's Deposition in 1908.

TESTIMONY OF CAPTAIN MICAJAH WOODS, AT THE 1908 DEPOSITION, (Appendix pp. 120-133.)

Proceedings of 1901 *Bona Fide,* Correct and in Full Force.

Testimony of Capt. Micajah Woods, 201-218.

MICAJAH WOODS,

being first cautioned and duly sworn to testify the whole truth, deposes and testifies as follows:

1st Q. By Counsel for Plaintiff: Will you please give your name and age?

A. Micajah Woods, 64 years old.

2nd Q. Where do you reside?

A. In Charlottesville, Va.

3rd Q. What is your profession?

A. Lawyer by profession.

4th Q. How many years have you been practicing law?

A. I came to the bar in the Fall of 1868, forty years.

5th Q. Have you been continually in the active practice of law since that time?

A. I have, sir.

6th Q. As a lawyer have you any official capacity in the State of Virginia?

A. I have been Commonwealth's Attorney for the County of Albermarle.

7th Q. How long have you been Commonwealth's Attorney for the County of Albemarle?

A. I have been Commonwealth's Attorney of Albemarle County ever since December, 1870.

8th Q. Are you still?

A. Yes; my present term does not expire for three years.

9th Q. Are you an officer of the Virginia Bar also?

A. I am the President of the Virginia State Bar Association for this current year, 1908-9.

10th Q. In what courts have you practiced and do you now practice?

A. I practice in the Circuit Courts of Virginia, a good many of them; I practice also in the Supreme Court of the State, and also practice in the Federal Court of the State.

11th Q. How long have you known the plaintiff in this case?

A. I think I have known Mr. Chanler for 12 or 15 years.

12th Q. Did you know him prior to February 13. 1897?

A. I did.

PLAINTIFF'S LETTER OF JULY 3RD, 1897, RECEIVED IN FALL OF 1897.

Testimony Capt. Micajah Woods, 202.

13th Q. Did you receive a letter from plaintiff in October, 1897?

A. I think that was about the time I received a letter. I don't remember the exact month.

14th Q. How did you get this letter, Capt. Woods?

A. The letter was brought to me by a New York lawyer by the name of Philip—Mr. Philip.

15th Q. Did you know the handwriting of the plaintiff in this case, Mr. John Armstrong Chaloner?

A. Yes, I did.

16th Q. Did you recognize the letter that you received at that time as the handwriting of Mr. John Armstrong Chaloner?

A. My recollection is that the letter was in his handwriting.

17th Q. Do you recognize this as the letter which you received?

(Counsel hands letter to witness.)

A. (Witness examines letter and states) : Yes, that is the letter that I received.

(Counsel for Plaintiff: I now file a letter, dated July 3rd, 1897, and offer the same in evidence in this case, the letter being addressed to the Hon. Micajah Woods, Commonwealth's Attorney, Charlottesville, Albemarle Co., Va., and written from the Society of the New York Hospital, White Plains, New York, and signed "John Armstrong Chaloner, with a short postscript, signed "J. A. C." and mark the same "Exhibit K.")

(Note—It is stipulated that a copy of the above letter may be attached in place of the original and the original withdrawn; the original, however, to be produced by counsel for the plaintiff upon the trial of this action.)

(The same stipulation is also made as to the other letters offered in evidence.)

18th Q. Capt. Woods, you state that you identify this letter as the letter received in October, 1897?

A. I do.

19th Q. Brought you by Mr. Philip from Mr. Chaloner?

A. Yes, sir.

20th Q. After receiving this letter from the plaintiff, when and where did you next see him?

A. My recollection is that I next saw Mr. Chaloner in the fall of 1901, probably about the month of September.

21st Q. Where did you see him?

A. In this county and in my office in this city.

22nd Q. Did you represent the plaintiff as attorney in the Proceedings inquiring into the sanity of John Armstrong Chaloner, instituted in Albemarle County, Virginia, by C. Ruffin Randolph, on September 20, 1901, which case was decided on November 6, 1901?

A. Yes, and associated with me were the following gentlemen: Senator John W. Daniel and his partner, Mr. Fred Harper, and Mr. Armistead C. Gordon, of Staunton, Va., as attorneys for Mr. John Armstrong Chaloner.

23rd Q. Under what procedure and what law did C. Ruffin Randolph file his application against the plaintiff in the Albemarle County, Virginia, Proceedings in 1901?

A. The proceeding was instituted in the County Court of Albemarle County, Va., under the provision of Section 1698 of the Code of Virginia of 1887, which reads as follows:

"Sec. 1698. When Committee of Residents appointed in other cases.—If a person residing in this State is so found, be suspected to be insane, the Court of the County or corporation of which such person is an inhabitant, shall, on the application of any party interested, proceed to examine into his state of mind, and

being satisfied that he is insane, shall appoint a Committee of him."

24th Q. Has there been any change in this section since said Proceedings were had?

A. No, sir; there has been no amendment of that section.

25th Q. Any change at all?

A. No, sir; no change whatever.

26th Q. Was the County Court of Albemarle County a Court of record?

A. It was.

27th Q. Was it the Court of the County of which John Armstrong Chaloner was then an inhabitant?

A. Yes, sir.

28th Q. Under the Law and practice of Virginia was this application sufficient and regular in form?

(By Mr. Choate: Objected to as too general.)

(Note—It is conceded that the witness is qualified as an expert to testify and no objection is raised on that ground.)

A. We gentlemen who represented Mr. Chaloner in that Proceeding as attorneys, considered it a regular and proper Proceeding under that Statute.

29th Q. And do you now consider that it was regular and sufficient?

A. I do.

30th Q. Did the plaintiff, John Armstrong Chaloner, appear in the Albemarle County, Va., Proceedings in 1901 in person.

A. He appeared in person and was examined by the Court.

31st Q. In the answer filed by the defendant in this

case it is said that these Albemarle County, Virginia, Proceedings of 1901 should be vacated and set aside for the reason that the petition was not sworn to, or otherwise verified, what have you to say about this?

A. There is nothing in the statute under which the Proceeding was instituted that required the Petition to be sworn to.

32nd Q. Is there any provision or any Law in Virginia which would require that this should be sworn to?

A. Not that I know of in a Proceeding of that character.

33rd Q. In the same answer, it is said that these Albemarle County, Virginia, Proceedings should be vacated and set aside because the said petition or application of Cary Ruffin Randolph was not presented to the County Court of Albemarle County, but it was presented to the Hon. John M. White, Judge of said Court; what have you to say about this?

A. The Petition in the case referred to was addressed to the Judge of the Court, as is the practice and custom in Virginia, in a Proceeding of an Equitable character. In my long experience as a practicing attorney in the Courts of this State, I do not recall that any bill in Chancery or any Petition in an Equitable Proceeding was addressed otherwise than to the Judge of the Court. There is a distinction in Virginia, which still holds between the Equitable and the Legal jurisdiction of our Courts, and in an Equitable Proceeding —that is, suits in Chancery, Petitions of an Equitable character—the practice is uniform and unbroken so far as I know, for all the Proceedings to be addressed to the Judge of the Court.

34th Q. Are Minor's Institutes, Barton's Chancery Practice and Sands' Suits in Equity considered legal authorities in Virginia?

A. They are considered legal authorities and the forms that are given in all of said works show that the custom and practice in Virginia is to address the pleadings to the Judge of the Court.

35th Q. What was the object of the Proceedings instituted by Cary Ruffin Randolph, in Albemarle County, Va., on September 20, 1901?

(By Mr. Choate: I object to that as opening for the contents of a writing.)

A. The Petition, according to my recollection, shows upon its face the object of the Petition, namely, to ascertain by an investigation whether a Committee should be appointed to take charge of Mr. Chaloner's estate.

36th Q. Did C. Ruffin Randolph, in person, sign the Petition or application filed in Albemarle County, Virginia, on September 20, 1901, asking the Court to examine into the state of mind of John Armstrong Chaloner and determine whether a Committee of his person and estate should be appointed?

A. My recollection is that he did.

37th Q. Did C. Ruffin Randolph, who filed the application or Petition in this Proceeding, have such an interest in the matter as is required by Section 1698 of the Code of Virginia?

A. Mr. Randolph was a resident of this State owned property in the neighborhood of Mr. Chaloner, resided near and was a neighbor of Mr. Chaloner's, and, of course, was interested as such in the question as to whether he was sane or insane.

38th Q. In your opinion, did he have an interest in the matter such as to meet the requirements of Section 1698 of the Code of Virginia?

A. It was the opinion of the attorneys associated

with me and my opinion that Mr. Randolph was so interested as to justify him in filing the application which was made to the Court.

39th Q. And also is it now your opinion that he had such an interest in the matter?

A. Yes, sir.

40th Q. At the hearing of this case, on November 6, 1901, in the County Court of Albemarle County, Va., was C. Ruffin Randolph present in said Court in person as petitioner in said Proceedings?

A. Yes, sir.

41st Q. Was this Proceeding instituted and conducted and prosecuted in good faith, with a *bona fide* intent and purpose to have the Court examine into the state of mind of John Armstrong Chaloner and determine whether a Committee of his person and estate should be appointed?

(By Mr. Choate: I object to that as leading and calling for the conclusion of the witness as to the state of mind of the said petitioner who brought the Proceedings, and also as incompetent.)

A. It was.

42nd Q. Were the said Albemarle County, Va., Proceeding *ex parte?*

A. Well, sir, the Petition was filed by Mr. C. Ruffin Randolph, a citizen of the State and a resident of the County of Albemarle, Va., and Mr. Chaloner was notified of it, and appeared with the witness before the Court, so far as the requirements of the Statute were concerned, Mr. Randolph represented the people of the State and of the County, and Mr. Chaloner his own interests, and they were regarded as necessary parties.

43rd Q. Was there evidence introduced in said Albemarle County, Virginia, Proceedings competent and

sufficient under the Virginia Law to justify the decree that was entered on November 6th, 1901?

A. The case was heard by Judge John M. White, who was then Judge of Albemarle County Court, and now is Judge of the Circuit Court of Albemarle County. He is regarded as one of the soundest and best judges in the State, and after hearing the testimony his decision was that there was no occasion for the appointment of a Committee of the person or estate of Mr. Chaloner, and the Petition was dismissed.

44th Q. In your opinion was the evidence competent and sufficient under the Virginia Laws to justify the decree that was entered?

A. It was.

45th Q. In your opinion the County Court of Albemarle County has jurisdiction both of the subject-matter and the parties?

(By Mr. Choate: Objected to as calling for conclusion.)

A. In my opinion it had jurisdiction.

46th Q. It is also alleged in said answer filed in this present case that no process or notice of said Albemarle County, Virginia, Proceedings, at any stage thereof was ever issued or served, and no such process or notice was ever served upon the said plaintiff, John Armstrong Chaloner, or upon Prescott Hall Butler, who it alleges was then a citizen of New York, and of the City and County of New York, either individually, or as Committee of the person and property of the plaintiff, John Armstrong Chaloner, or upon this defendant, meaning Thomas T. Sherman, either individually or as Committee of the person and property of the said plaintiff, meaning John Armstrong Chaloner, or upon any of the

heirs-at-law or next of kin of the said John Armstrong Chaloner, and that no heirs-at-law or next of kin of the said John Armstrong Chaloner, and neither the said Prescott Hall Butler, nor the defendant, Thomas T. Sherman, ever appeared in said Proceeding, either individually or as Committee as aforesaid, in person, or by attorney or counsel; what have you to say about this?

A. Under the Statute under which this Proceeding was instituted there *is no provision,* and *was no provision* for giving notice to any person, except the party suspected of being insane, and in investigations under the section of the Statute which I have recited, and under investigations before Justices touching the sanity of a person, there is no law requiring notice to be given to the next of kin or the parties holding the estate of the party suspected, or any part thereof.

47th Q. Under the Law in Virginia, then, it is not necessary to give notice to any one except the alleged incompetent person, is that the effect of your answer?

A. Yes, sir.

48th Q. In this case, in your opinion, is it material whether notice was given to the plaintiff, John Armstrong Chaloner, or not, since he appeared in Court at the hearing in the Albemarle County Proceedings, in person and by attorney on the date of the hearing of the matters at issue?

A. It is not material. *I will add that his appearance in Court was evidence of the fact that he had notice.*

49th Q. And was or not that sufficient?

A. That was sufficient.

50th Q. Was the order or decree entered in the Albemarle County, Virginia, Proceedings on November 6, 1901, inquiring into the sanity of John Armstrong Chal-

oner, a final order or decree on the merits of the issue then and there in controversy?

A. I now so regard it.

51st Q. Do you now so regard it?

A. I now so regard it.

52nd Q. Has said order or decree since been appealed from, annulled, set aside, vacated, reversed or in any particular modified or changed?

A. Not that I have ever heard of, and I would have known of any such appeal, modification or change.

53rd Q. Is said order or decree still in full force and effect as rendered?

A. It is.

PROCEEDINGS OF 1901 POSTPONED AT REQUEST OF REPRESENTATIVE OF OTHER SIDE.

Testimony Capt. Micajah Woods, 213-218.

54th Q. As I understand, the said Albemarle County, Virginia, Proceedings were instituted on the 20th day of September, 1901, was there any continuance at the request of any one representing John Armstrong Chaloner's relatives, or his then alleged Committee?

(By Mr. Choate: I object to that as leading, as calling for a conclusion of the witness on a matter of fact.)

A. My recollection is that a *member of this bar, Mr. John B. Moon,* who was *then thought to represent the New York Committee of Mr. Chaloner, requested that the matter of the investigation might be laid over and not gone into at the October Court.*

55th Q. What did Mr. Moon say to you when he called on you at the time you have just referred to?

(By Mr. Choate: I object to that as calling for hearsay and as immaterial.)

A. I do not remember exactly what Mr. Moon said. My *recollection is that he told me in general terms that he had been approached in some way by the New York Committee to look after these Proceedings in Virginia,* an dthat he *wished time to confer with the Committee.* I don't remember that he told me directly that he had been engaged as counsel, *but as a matter of courtesy to Mr. Moon, the investigation was laid over for a month.*

56th Q. When Mr. Moon called to see you with reference to this continuance, whom did he purport to represent, if any one?

(By Mr. Choate: I object to that as calling for a conclusion and as leading.)

A. My recollection is not distinct as to the parties or party that Mr. Moon represented, according to his statement. *I got the impression from what he said that he had been requested by the New York Committee to watch the Proceeding in Virginia in behalf of the Committee and in behalf of Mr. Chaloner's family.*

57th Q. Who is Mr. John B. Moon?

A. He is an attorney-at-law in this city.

58th Q. Was he an attorney-at-law and practicing attorney at that time?

A. He was.

59th Q. In what capacity was he representing the Committee or the members of Mr. Chaloner's family, if at all?

(By Mr. Choate: I object to that as calling for a conclusion, also as incompetent, the witness having said that he did not remember anything clearly more than he stated.)

A. I don't remember to what extent he said he represented these parties; I could not state *after this lapse of time* whether Mr. Moon stated to me *specifically* how or to what extent he represented the parties above referred to. His statements to me led me to believe that in a general way *he was requested to look after the Virginia Proceedings in behalf of the New York Committee and Mr. Chaloner's family,* but to what extent or how employed I do not know, and did not know then.

60th Q. Do you recognize this as your handwriting and the envelope in which you returned the letter you identified in the first part of your testimony as the letter you received from Mr. Chaloner in October, 1897?

(Counsel hands envelope to the witness, who examines it.)

A. The address on this envelope is certainly in my handwriting, but I cannot say with absolute certainty what I may have sent in this envelope.

(Counsel for Plaintiff: I now file this envelope and offer the same in evidence in this case, marked "Plaintiff's Exhibit M.")

(By Counsel for Plaintiff: We offer in evidence what purports to be a certified and exemplified copy of the Petition of Cary Ruffin Randolph, Petitioner, against John Armstrong Chaloner, Respondent, submitted to the County Court of Albemarle County, Virginia, to the

Hon. John M. White, Judge of said Court, and the Proceedings annexed thereto and testimony of witnesses sworn and examined under the examination conducted under said Petition and purporting to be a complete record of the examination taken on that occasion.)

61st Q. Captain Woods, is that a true copy of the Petition of Mr. C. Ruffin Randolph, and of which you have been speaking here in your testimony?

(By Mr. Choate: I concede that it is a true copy of the Petition.)

62nd Q. Is this Proceeding here shown, and marked "Plaintiff's Exhibit L," the Proceeding in Albemarle County, Virginia, in 1901, in the month of November, concerning which you have just testified?

(Note—It is conceded on the record that it is.)

63rd Q. I read you, Mr. Woods, a statement which appears on the record to have been made by you as follows:

> "Hon. Micajah Woods made the following statement to the Court: I desire to present to the Court, with a view of their qualification, my two friends, the Hon. Armistead C. Gordon and Frederick Harper. He then further stated: We desire to present to the Court the following Petition, Exhibit (A). Your Honour is aware that this Petition was prepared and it was expected that it would be filed at the last term of the Court, but owing to suggestions made, *and especially the suggestion made by Counsel for Committee of Mr. Chaloner,* the Petition was not

filed at the last Court but it was understood that it would be heard today, and we are here today to have the matter investigated. * * *"

To whom did you refer when you used the expression "Counsel for Committee of Mr. Chaloner?"

(By Mr. Choate: I object to this on the ground that this is cross-examination of the plaintiff's own witness, and as leading.)

A. *I refer to Mr. John B. Moon.*

64th Q. After refreshing your recollection by reading this extract, are you now prepared to say whether at that time you considered Mr. John B. Moon counsel for the Committee of Mr. Chaloner, in New York?

(By Mr. Choate: I object to that as calling for the conclusion of the witness on a matter of fact; also as leading.)

A. My recollection is that in deference to the request made by Mr. Moon, no Proceedings were had at the October Court, 1901. *I do not know whether Mr. Moon was counsel for the New York Committee, or for Mr. Chaloner's family when the case was called in November,* 1901, *for investigation.*

65th Q. *You treated him as such, did you not, in granting the adjournment?*

(By Mr. Choate: I object to that as immaterial and as leading.)

A. It is proper to state that Mr. Moon did not take part as counsel for anyone in the investigation before

the County Court in November, 1901, *and I do not know whether he was then employed as counsel or not.*

Cross-Examination.

1st Q. By Counsel for Defendant: No notice was in fact given the then plaintiff of the pendency of the Albemarle County Proceedings in 1901, was there?

A. So far as I know, none was.

2nd Q. And no representative of the Committee appeared upon the hearing of the case in November, 1901?

A. No, sir. And further this deponent saith not.

* * * * * * *

We have heretofore taken up allegations upon the part of the alienists in the employ of the Chanler family. The next in order, after those of said Dr. Samuel B. Lyon, Medical Superintendent of "Bloomingdale," are those of Dr. Austin Flint, Sr.,—since deceased—and Dr. Carlos F. Macdonald.

We respectfully submit that the most celebrated case in which said two Medical gentlemen were employed—and then as now for the prosecution—was that of the *People of New York against H. K. Thaw.*

To the bitter end said Medical gentlemen maintained under oath and—highly paid testimony at that—that said H. K. Thaw was a dangerous paranoiac and hopelessly insane. The first time said Thaw got a chance to appear before a Lunacy Commission outside the State of New York—namely, in New Hampshire—said Thaw was found by a commission fully as learned—fully as eminent professionally as any said Thaw faced in any of his various trials in the State of New York—sane and safe.

Later on said Thaw was also found so, in his trial before the learned Mr. Justice Hendricks of the New

York Supreme Court and an advisory Jury. Since said finding nothing has occurred to indicate that the said finding—together with said New Hampshire finding aforesaid—was not and were not correct; though had in the teeth of the bitterest opposition upon the part of said Doctors Flint and Macdonald.

Mr. Justice Hendricks' charge to the jury in the Thaw case specifically stated that the jury was *to disregard the claim of Dr. Austin Flint, Sr., "that the question of Thaw's sanity could only be decided by alienists."*

This, we respectfully submit, *supports our contention in our said law book,* "The Lunacy Law of the World;" which was in turn supported by the *Lancaster Law Review,* aforesaid, as follows: "In setting forth the importance of allowing the alleged lunatic an opportunity to appear, the author says: *"The test of sanity is a mental test, wholly within the power of the accused to accomplish, and without any witnesses, professional or lay, to back him up.* Suppose two paid experts in insanity, in the pay of the other side, swear that the defendant cannot tell what his past history has been—that said defendant's mind is a total blank upon the subject. Would that professional and paid and interested oath stand against the defendant's refutation thereof by taking the stand and promptly and lucidly giving his past history, provided he were afforded his legal privilege of taking the stand in place of being kept away from Court and having to allow his liberty and property to be perjured away from him in his enforced absence?' (p. 217)."

After the jury had brought in a verdict of sanity, the learned Justice went on to say, that he based his decisions that Thaw was sane on his own judgment: "fortified by the advice of a very intelligent jury." Mr. Justice Hendricks then observed, "We have had men here from New Hampshire, *not Alienists but men of*

large experience, who know the difference between a sane and insane man. We have had women here of undoubted high repute, who also testified that this man is sane. The testimony of these people impressed me very much.

"We have been told by one Alienist (Dr. Austin Flint, Sr.) that it was impossible for a layman to determine whether or not a man has paranoia; that only an Alienist could determine that.

"I want to say here a word about Alienists in our Courts—that it is fast becoming a scandal. If this Court and jury are to depend upon the opinion of Alienists who have made it their business for years for pay to render what they term expert testimony, I want to say that opinion to me has no value.

"The idea that a Doctor of repute should interview witnesses and publish his opinion in the public prints and help in the preparation of a case and then go on the witness stand is a state of affairs that must be remedied.

"If the Medical Profession does not cure this evil, I hope the Legislature soon will.

"I have adopted the verdict of the jury, and it is the opinion of this Court that Harry K. Thaw is sane."

We respectfully submit that the remarks from the bench upon the part of the learned Judge Hendricks, *supra*—are as pertinent to the action of said Doctors Flint and Macdonald in taking pay from the hostile Chanler family in order to swear plaintiff-in-error into a living death for life, as said apposite and profound remarks of the aforesaid trial Judge have—tested by time—and said Thaw's perfectly normal, proper and law-abiding conduct since said trial before Judge Hendricks—been proved to be in the aforesaid instance.

Said allegations—upon the part of said Doctors Flint and Macdonald—are indexed in Appendix, "Index of Exhibits," p. 855, as follows, to wit: "Exhibit G, Examination of Testimony of Doctors Flint and Macdonald," pp. 728-769.

In view of the criticisms of said five leading Law Reviews upon said law book by plaintiff-in-error; supported by the serried array of leading newspaper criticisms on both sides of the Atlantic upon plaintiff-in-error's literary work since publishing said law book; and also supported, we respectfully submit, by the following criticisms of plaintiff-in-error's literary work before—the year before—publishing said law book; namely, those of the New York *World*, the Raleigh, N. C., *News and Observer*, and the Richmond, Va., *Evening Journal;* upon plaintiff-in-error's satirical History of the seamy—but highly gilded side of the New York "Four Hundred" and their Legal, Medical, and Financial led-captains, toad eaters and parasites; entitled *"Four Years Behind the Bars of 'Bloomingdale' Or the Bankruptcy of Law in New York"* indexed p. 851 in Appendix as follows: Criticisms of *Four Years Behind the Bars of "Bloomingdale,"* 190-199: we respectfully submit that it is difficult to peruse the following climax and grand *finale* of the allegations of said Messrs. Flint and Macdonald, without a smile. Said excerpts, found on pages 747-748 of said "Exhibit G."—to wit: Dr. Carlos F. Macdonald on the stand. A. "Yes, sir; and it presents all the ear marks of typical paranoia. In the physical and mental condition there is no symptom lacking to make it a perfectly typical case of paranoia. If one wanted a case for teaching or describing a case in a text-book, you could not describe it more graphically than simply taking this case as it presents itself. *It is the most striking case of paranoia that I have ever seen in my life. I should say that Mr. Chanler is the*

most typical classical case of paranoia that I have ever seen. I have seen *thousands* of them." Affidavit, May 5, 1899, of Dr. Carlos F. Macdonald, "Deponent further says—*that the said Chanler is now, in his opinion, a hopeless paranoiac, his mental disorder being incurable and progressive.*"

And the late Dr. Austin Flint, Sr., is good enough to say—p. 748, *ibid.*—said Dr. Flint on the stand—Q. "And from what form of insanity is he now suffering? A. He is a *typical case* of what is known as *paranoia*, or chronic delusional insanity. Q. In your opinion, Doctor, is that progressive and incurable? A. *It is incurable and progressive and will finally terminate in dementia.* If I may be allowed to say those cases frequently live for a very much longer time, quite different from paresis. Q. In your judgment, is Mr. Chanler now capable of taking care of his estate and person? A. No, sir; he is not. Q. Is his physical condition all outlined with that form (paranoia)? A. *Nothing could be more typical of that form of the disease.* It is an *absolutely typical case* (of paranoia) from *every* point of view."

Owing to the fact that plaintiff-in-error received peremptory orders from the learned Judge Hand of the Federal District Court for the Southern District of New York that his Deposition then in progress at Charlottesville must be immediately terminated or the case of *Chaloner against Sherman* would be sent to the foot of the calendar—said orders being received in January, 1912—plaintiff-in-error was not quite able to take up *all* of the allegations of said Dr. Carlos F. Macdonald, in the above excerpt. We respectfully submit that the evidence above given shows that this was owing entirely to lack of time to reach each and every allegation of said Dr. Macdonald and emphatically *not* to disinclination so to do.

Which assertion, we respectfully submit, is fully substantiated by the fact that many of the allegations against plaintiff-in-error's sanity—touched upon from another angle—so to speak—are indexed in Appendix, as follows: To wit: "Testimony of Drs. Flint and Macdonald disproved by plaintiff-in-error," pp. 532-547. We respectfully submit that we have unmasked the chicanery, deceit, malice and ignorance displayed by Doctors Carlos F. Macdonald and Austin Flint, Sr., in their aspersions upon the competency and sanity of plaintiff-in-error—in the above.

Continuing the learned counsel for defendant-in-error says, p. 16 of said brief:

"The above reasoning appears to cover all the special assignments of error which require any notice. A number of other questions were, however, discussed at the trial, and to meet the possibility that discussion in regard to them may lurk undetected by us, somewhere concealed in the vast bulk of the plaintiff-in-error's brief, we feel that we should add a brief discussion of each. Most of these which we haven't specifically discussed attack only remarks and expressions of opinion by the Court (Trial Court) which were not in any true sense rulings. On such utterances error cannot be assigned (*Gibson* v. *Luther*, 196 Fed. 203.)" We venture to say that in said twenty-odd "The Parallels;" covering twenty-odd assignments, *no attack* that we have made upon a ruling—direct or indirect—of the Trial Judge *has been unsupported by a ruling directly in point, and in our favor, by* 162 Fed. Rep. 19, the learned United States Court of Appeals for the Second Circuit—Justices Lacombe, Coxe and Noyes sitting.

Continuing, the learned counsel for defendant-in-error says under Point VI, p. 16 of said brief before the Circuit Court of Appeals:

POINT

VI.

"THE LAW UNDER WHICH THE 1899 PROCEEDINGS WERE CONDUCTED IS NOT UNCONSTITUTIONAL FOR LACK OF ANY REQUIREMENT THAT NOTICE BE GIVEN TO THE ALLEGED LUNATIC."

This is an attempt to make Constitutional a Statute which is defective and unconstitutional if considered by itself. The attempt is made to bolster up this Statute by saying that general principles of Law require notice.

Our position is, we respectfully submit, that the question of the Constitutionality of the Statute must be determined by a consideration of its *own contents*, and *not* by reading into the Statute something which is not there. Supported by Earl, J., in *Stuart* v. *Palmer*, 74 N. Y., *infra*. "The Constitutional validity of Law is to be tested, *not* by what *has* been done under it, but by what *may*, by its authority, be done."

As the Statute under consideration is one which relates to a particular Proceeding, and defines the procedure, we must assume that the Legislature of the State of New York, in enacting the Statute, intended to require nothing more in the way of procedure than is specified in the Statute, and intended that the Lunacy Proceedings provided for in the Statute should be valid and binding if conducted in strict accordance with the Statute; and without any formalities not therein specified.

Considering the Statute in this light, *and finding that it omits any provision for notice* to the alleged lunatic, it is unconstitutional.

In the case of *People, ex rel, Maurice J. Sullivan, Re*

lator v. *John G. Wendel and Mary E. A. Wendel, Respondents*, 33 Misc., 496 (Supreme Court, Kings, Special Term, December, 1900).

Marean, J., said:

> "She had no notice of the application, either personal or by substituted service on some person in her behalf, and there was no hearing at which she was either present or represented by any other person. She had been finally adjudged insane and committed to perpetual restraint, without notice or hearing. She is deprived of her liberty, therefore, without due process of law (*People ex rel Ordway* v. *St. Saviour's Sanitarium*, 34 App. Div. 363). The *Insanity Law*, so far as it permits this *is in violation of the Constitution.*
>
> "She is discharged."

In the case of *The People ex rel, Elizabeth Ordway* v. *St. Saviour Asylum*, 34 App. Div. (N. Y.), 363, this very question was squarely presented and passed upon.

Elizabeth Ordway, by agreement with her family, and friends, permitted herself to be committed to St. Saviour's Asylum for one year for the purpose of treatment. Pursuant to that agreement Proceedings were had under the Statute of New York and she was committed to that institution by the Court for the period of one year, unless sooner discharged by the Trustees of the Asylum. *There was no notice of the Proceedings served on her.* She, *however*, was fully *cognizant of the Proceedings*, which were *had with her consent and permission*, and, pursuant to the Commitment order, she was received in the Asylum. Sometime thereafter, she desired her freedom, and, the Trustees refusing to discharge her,

she sued out a writ of *habeas corpus*. The return of the Trustees showed the records of the Proceedings under which she was committed and placed in their custody. Counsel for Miss Ordway demurred to the return, and argued that the *Proceedings were void as being in contravention of the Constitutional provision requiring due process of Law*, and the Court sustained the demurrer, holding the Proceedings void.

Among other things, the Court said:

> "Acts of the Legislature which go beyond the allowance of temporary confinement or restraint, until trial or hearing may be had, and the accused have his day in Court in some way customary or adequate to enable him to present his case, are invalid exercise of legislative power. * * * *It surely cannot be said that the procedure authorized by the acts under which this relator was committed and which created the wrong, is due process of law simply because the Legislature chose to authorize that procedure.*"

In the case of *Sidney H. Stuart, Jr., Appellant* v. *George W. Palmer, as Collector, etc., et al, Respondents*, 74 N. Y., 183 (May, 1878).

Earle, J., held:

> "I am of the opinion that the Constitution sanctions no law imposing such an assessment, without a notice to and a hearing or an opportunity of a hearing by the owners of the property to be assessed. It is *not enough* that the owners may *by chance* have notice or that they may *as a matter of favor*, have a hearing. The law *must require*

notice to them, and give them the *right* to a *hearing* and an *opportunity to be heard.* * * *

"The Constitutional validity of law is to be tested, *not* by what *has* been done under it, but by what *may,* by its authority be done. The Legislature may prescribe the kind of notice and the mode in which it shall be given, but it *cannot* dispense with *all notice.* * * *

"The Legislature can no more arbitrarily impose an assessment for which property may be taken and sold *than it can* render a *judgment against a person without a hearing.* It is a rule founded on the *first principles of natural justice older than written Constitutions,* that a citizen shall not be deprived of his life, liberty or property *without an opportunity to be heard in defense of his right,* and the Constitutional provision that no person shall be deprived of these 'without due process of law' has its *foundation* in this rule. This provision is the *most important guaranty of personal rights to be found in the Federal or State Constitutions.* It is a *limitation* upon *arbitrary power,* and is a *guaranty* against *arbitrary legislation. No citizen shall arbitrarily be deprived of his life, liberty or property. This the Legislature cannot do, nor authorize to be done.* * * *"

In the case of *Re* W. H. Lambert (Cal.), 55 L. R. A., 856.

Harrison, J., said:

"An examination of the foregoing provisions of the Statute shows that there is no provision for the giving to the alleged insane person any notice of the Proceedings against him, and that under

its provisions the first intimation that he may have thereof may be when the Sheriff takes him into his custody under the Order of Commitment. The person making the application for the Commitment is not required to give any notice thereof, nor is there any requirement that he shall be informed of the object for which the physicians are examining him." * * *

"The Statute thus clearly provides that the Proceedings before the Judge in a case like the present may be entirely *ex parte*, and that he may be satisfied that the alleged insane person is insane by *merely examining the certificate and petition*. He may issue the Order of Commitment upon the opinion of the two Examiners, without any examination by himself of the person sought to be committed, *or of the Examiners who have made the certificate*, and without *any knowledge* of the *facts* or *testimony upon which they have made their certificates*. In thus acting upon these documents, he takes as the basis of his action the *opinion* of the examiners ascertained as before shown, that the individual is insane. *The opinions of practitioners of medicine, however, upon the question of insanity, are not always uniform or infallible, especially if such opinion is formed ex parte, or without an opportunity for a full investigation of the charge.* The *mere certificate* of an *opinion* thus obtained *ought not* to be a sufficient warrant for an order for the Commitment of a person in an *Insane Asylum*. There should at least be the *semblance* of a *judicial investigation*, of which a *public record can be preserved, before* a person can be *deprived of his liberty*. * * *

* * * * * * * *

"What constitutes due process of law may not be readily formulated in a definition of universal application, but it includes in all cases the *right* of the person to such *notice* of the claim as is appropriate to the proceedings and adapted to the nature of the cause, and the *right to be heard before* an order for judgment in the Proceedings *can be made* by which he will be *deprived of his life, liberty or property.* The *Constitutional guaranty* that he shall not be deprived of his liberty without *due process of law,* is *violated whenever* such judgment is had *without giving him an opportunity to be heard in defense of the charge,* and upon such hearing to offer evidence in support of his defense. If his right to a hearing depends upon the *will* or *caprice* of *others* or upon the *discretion* or the *will* of the Judge who is to make a decision upon the issue, he is *not protected in his Constitutional rights.* (*Underwood* v. *People,* 32 Mich., 1, 20 Am. Rep., 633). * * *

"* * * The question to be determined is not whether the action of the Judge in investigating the insanity of the petitioner was conducted under the forms of law, and with proper regard for his rights, but *whether the Judge had the right to enter upon the investigation, or take any action whatever in refereuce to his sanity.* * * *

"Under the foregoing consideration, it *must be held* that the Insanity Law of 1896, to the extent that it authorizes the confinement of a person to an insane asylum *without giving him notice,* and *an opportunity to be heard* upon the charge against him, *is unconstitutional,* and that the Proceedings by which the petitioner is held by the respondent are invalid.

"It is ordered that the petitioner be released from the asylum."

It thus appears from the foregoing authorities that, in order that a State Statute prescribing procedure in lunacy cases may be Constitutional, under the due process of law provisions of the State and Federal Constitutions, it is *absolutely necessary* that the Statute shall have embodied within it a *positive requirement* that *notice* of the Proceedings be given to the alleged lunatic, and that he be given an *opportunity* to be heard. It is not enough to save a Statute from condemnation on the ground of unconstitutionality, to say that the general unwritten law of procedure in the Courts of a State requires that notice be given, or to say that the *Judge*, in the order appointing the Commission, and authorizing the empaneling of a Jury to try the issue before the Commission, has, in that order *required* that notice be given. Supported by Earl, J., *supra*. *It is not a question of the Constitutionality of the Judge's order which is under consideration here, but the question of the Constitutionality of the Statute.* Supported by Harrison, J., in *Re* W. H. Lambert (Cal.) 55 L. R. A., *supra:* "If his right to a hearing depends upon the *will* or *caprice* of *others* or upon the *discretion* or the *will* of the *Judge* who is to make a decision upon the issue, he is *not protected in his Constitutional rights.*" That Statute contains *no provision requiring notice*, and can *only be read* as *having been intended* by the Legislature of the State of New York as *authorizing the institution and prosecution* to *final judgment of the Lunacy Proceedings* which would deprive the alleged lunatic of his liberty, without notice.

In interpreting an ambiguous Statute the rule is—we respectfully submit—to compare same with some Statute, which is less ambiguous on or near the same subject.

Applying the above rule in the present instance we have a clear cut declaration upon the part of the Legislature of New York that it does not approve of notice in Lunacy Proceedings, does not want the alleged lunatic to have notice of the Proceedings against him, and in its laws of 1896 *in re* Lunacy Procedure has emphatically stated —tho' with great finesse—as tho' it knew it were doing an unconstitutional thing and wished to so cloak, hide and gloss over its said act that no one but a lawyer and a penetrating one at that, could pierce the said cloak— said Legislature has emphatically stated that it disapproved of notice to the alleged lunatic in the following form signed by the learned Judge Henry A. Gildersleeve in the Commitment Papers (Transcript of Record, p. 110, fol. 215), "I do hereby certify that I have dispensed with personal service or that I have directed substituted service *as provided by law.*"

One would naturally presume from reading the above that if personal service was dispensed with substituted service *must* be directed *"as provided by law." But nothing of the sort is the case.* The unfortunate plaintiff-in-error was duly *deprived* of personal service *and*—not the false and misleading *"or"* of this crafty and sinister Statute—*"as provided by law."*

There can, therefore, be no possible shadow of a doubt about the views and attitude of the Legislature of the State of New York—on the strength of the aforesaid exhibition of Legislative craft and guile in the interests of the Amalgamated Private Mad-houses honeycombing the "Empire State" of the largest and most ancient and most pretentious of which the head of the firm of Evarts, Choate and Sherman is or until recently at all events was a distinguished pillar and support as a member of the "Board of Governors."

Lastly, all possible doubt upon this topic is forever

swept away by the forceful and eloquent words of the learned counsel for defendant-in-error, p. 17, Point VII of his said brief. To-wit. "The Proceeding (1897 Commitment) was in full and exact accordance with the Insanity Law of New York which permits a commitment without notice." We respectfully submit that we lay especial stress upon the fact that the Commitment Proceedings of plaintiff-in-error were *final* Proceedings—contained a *final Indictment* against plaintiff-in-error's sanity. The proof of the above lying in the fact that plaintiff-in-error lay in "Bloomingdale" for over *two* calendar years before Proceedings before a Sheriff's Jury and Commission-in-Lunacy were instituted. And it should be borne in mind, we respectfully submit, that the only earthly reason said Proceedings were then at said time over two calendar years after Commitment Proceedings were had was the convenience and interest of the Chanler family and their friends and allies. This is exhaustively gone into in this Brief, *supra*, and in support of our said contention said Winthrop Astor Chanler states under cross-examination in his Deposition *de bene esse* (p. —, fol. —), *supra*, that said 1899 Sheriff's Jury Proceedings were brought as a convenience to said Stanford White who had apparently grown tired of his self-sought post of Power of Attorney for plaintiff-in-error—now that his object was accomplished and plaintiff-in-error immured apparently for life in the cells of "Bloomingdale"—and asked to be awarded for his honorable services by being relieved. Whereupon said P. H. Butler, said White's brother-in-law, was appointed at the said 1899 Proceedings.

The Legislature of New York having defied the Common Law which calls in stentorian tones for notice and opportunity to be heard—as well as *any other* known and recognized law or practice—in its above said sinister and

wicked Statute will not be construed—by a Court of Justice as blowing hot and cold—as setting *all* law and *all* legal practice of whatever shade or colour at defiance in its Statute relative to Commitment Proceedings aforesaid, and then *relying* upon any law or any practice aforesaid to cure the defects in its Statute relative to Proceedings before a Commission-in-Lunacy and Sheriff's Jury. It has made its bed—has said Legislature, we respectfully submit, and therefore *must* lie in it.

Such Statutes have been condemned in the cases before quoted, and those decisions are clearly right.

Such a Statute was condemned, and in strong terms, by that great New York Judge—the late Chief Judge Rapallo—of the New York Court of Appeals in *Ferguson* v. *Crawford*, 70 N. Y., *infra*—In which the learned Chief Judge said: "He is sought to be held bound by a judgment when he was never personally summoned or had notice of the Proceedings, *which result has been frequently declared to be contrary to the first principles of justice.*"

Section 2323-a of the Code of Civil Procedure is the only Section in the entire title dealing with this subject which requires notice to the alleged lunatic, and that Section is expressly limited to cases

> "where an incompetent person has been committed to a State Institution in any manner provided by law and is an inmate thereof."

That Section was added to the title in question by the Act of the Legislature of 1895, and the limitation was emphasized by the title of the Act of the Legislature of 1904, amending that Section, which title is—

"An Act to amend section twenty-three hundred and

twenty-three-a of the Code of Civil Procedure relating to the appointment of Committees for incompetent persons who are inmates of State Institutions." Laws of New York, 127th Session, 1904, Vol. 2, p. 1278.

The 1899 Proceedings, in which Prescott Hall Butler was appointed, was not instituted and conducted under Section 2323-a, and could not have been so instituted and conducted because it was not a case

> "where an incompetent person has been committed to a State Institution in any manner provided by law and is an inmate thereof."

It was instituted and conducted under the provisions of Section 2325, in which there is no mention of notice to the alleged incompetent.

When the Legislature in 1895 amended the title of the Code of Civil Procedure covering the appointment of committees for incompetent persons, it added Section 2323-a in its entirety, and provided that notice must be given to an incompetent person who was an inmate of a State Institution of a petition for the appointment of a Committee. Section 2325 was already in that title and did not provide for such notice. We respectfully insist, therefore, that the Legislature *clearly intended to authorize the institution and prosecution of petitions for Committees for alleged lunatics without notice in all cases not covered by the new Section, 2323-a,* then added to the law. This being so, there is no foundation for the contention made in behalf of the defendant-in-error that the deficiency of the Statute in the matter of notice may be supplied by the Chancery practice existing before the Code was enacted.

Supported by what we have set forth in support of our contention, *supra,* p. 5: "That Statute contains no provision *requiring notice.*" In closing our discussion of this Point VI of the learned counsel for defendant-in-error, we might observe that the highest Court in the State of New York has passed upon the question of opportunity to appear and be heard in any legal Proceedings—which of course includes *ipso facto* notice of said Proceedings. For the learned Counsel for defendant-in-error so assures us in Point V of his said brief. Namely that the New York Court of Appeals has decided in *Happy* versus *Mosher,* 48 New York, 313, that opportunity to be heard must not be "impracticable."

Said learned counsel says, p. 14 of his brief: "The Court of Appeals of New York has held in *Happy* v. *Mosher,* 48 *N. Y.,* 313, that a sufficient opportunity to be heard was afforded by Proceedings under a Statute which made the giving of an expensive bond a prerequisite to the right to defend. In deciding this case the Court said that opportunity to defend is not denied though made difficult *so long as* it is not *impracticable.*"

The Legislature must be held, we respectfully submit, *to have intended to supplant the Chancery* practice referred to, and to have intended that the title containing Sections 2323-a and 2325 should be *complete* and that *no* formalities should be required in Proceedings for the appointment of Committees *not* contained therein. When so considered, the Statute is plainly unconstitutional, and the Proceedings had thereunder are void.

In the Court below it was said by the learned counsel for defendant-in-error that

> "The law under which the 1899 Proceedings were conducted is not unconstitutional for lack

of any requirement that notice be given to the alleged lunatic."

Counsel further stated that

"The contention at the trial was that, although the plaintiff-in-error had notice of every stage of the 1899 Proceedings, such notice was insufficient as not required by Statute. The notice was, however, required by law, and that is sufficient,"

and cited *Matter of Blewitt*, 131 N. Y., 541.

He further stated—

A.

"The requirement was (not) included in the particular Code Section (Sec. 2323) dealing with the subject, but the power of the Court over lunatics is mainly inherent and not derived from the Code. The Code regulates it in certain particulars. In all particulars not so regulated, Proceedings in Lunacy are governed by the Chancery practice existing before the Code was enacted. That practice required notice of the execution of the Commission,"

citing *Gridley* v. *College of St. Francis Xavier*, 137 N. Y., 327, and *Matter of Andrews*, 192 N. Y., 514.

Counsel further stated—

"Moreover, the Code Section under which the Proceeding is taken, provides that the Commission 'may contain such other directions with respect to the matter of executing the Commission as the Court directs to be inserted therein.' The

order for the Commission directed that previous notice of time and place of execution of the Commission be given to the plaintiff-in-error. It follows that the notice served upon the plaintiff-in-error was not a mere voluntary notification, but was a Proceeding required by law."

Sections 2323, 2325 and 2328 under which the Proceeding of 1899 was instituted and prosecuted, contain *no* provision that notice be given to the alleged lunatic. The only Section requiring such notice is Section 2323-a which is limited to cases "where an incompetent person has been committed to a State Institution in any manner provided by law and is an inmate thereof."

The "Bloomingdale" Asylum, which is a department of the New York Hospital, owned and maintained by the corporation, The Society of the New York Hospital, is not a State Institution within the meaning of Section 2323-a.

The cases cited by defendant-in-error do not sustain the propositions asserted by him upon their authority.

In *Matter of Blewitt,* 131 N. Y., 541, the Court, after discussing at some length the necessity for notice—pointing out that Section 2325 of the Code does not touch the question of the right of the alleged lunatic to have notice—discussed the distinction between cases in which notice to the lunatic should be given, and cases in which it need not be given; and, *after expressing the opinion* that the Proceeding then under consideration by the Court was *invalid,* for *want of notice* to the alleged lunatic, the *Court abandoned* the *question of notice entirely* and *upon other grounds affirmed the order appealed from, though* the appeal was *grounded* upon lack of notice, therefore *Matter of Blewitt* is not authority for the proposition that notice to the alleged lunatic is absolutely required by law.

Gridley v. *College of St. Francis Xavier*, 127 N. Y., 327, is *not* an authority for the proposition asserted by counsel for the defendant-in-error that

> "The power of the Court over lunatics is mainly inherent and not derived from the Code. The Code regulates it in certain particulars. In all particulars not so regulated, Proceedings in Lunacy are governed by the Chancery practice existing before the Code was enacted. That practice required notice of the execution of the Commission."

In the Court's opinion there is no reference to such matter.

Matter of Andrews, 192 N. Y., 514, involved the power of the Supreme Court of the State of New York to remove a Committee of the estate of a person adjudged insane and to appoint a new Committee, without notice; and it was sought to sustain the authority of the Court in this regard upon the broad ground that, in the exercise of its jurisdiction over lunatics, idiots, habitual drunkards, and persons of unsound mind generally, authority is in the Court, of its own motion, in the absence of Statute, to remove the Committee of the estate of a person who has been committed. *The Court, however, determined the question by reference to the several Sctions of the Code of Civil Procedure relating to Committees of estates of lunatics, and not upon the ground asserted,* of general and inherent jurisdiction.

In considering counsel's statement that

> "Moreover, the Code Section under which the Proceeding is taken, provides that the Commis-

sion may contain such other directions with respect to the matter of executing the Commission as the Court directs to be inserted therein."

the *whole* Section should be considered. It is as follows:

"Section 2328. CONTENTS OF COMMISSION.—The Commission must direct the Commissioners to cause the Sheriff of the county specified therein to procure a Jury; and that they inquire by the Jury into the matters set forth in the Petition; and also into the value of the real and personal property of the person alleged to be incompetent, and the amount of his income. It may contain such other directions with respect to the subjects of the inquiry or the manner of executing the Commission, as the Court directs to be inserted therein."

This section *has no reference whatever* to the matter of process or notice. That matter is covered by the provisions of Section 2325. The function of the present Section (2328) is to give directions to the Commissioners as to what they shall do under the Commission *in the matter of procuring a Jury* and inquiring into the matters set forth in the Petition, and other related matters.

Furthermore. Our aforesaid contention is absolutely confirmed by the ruling of the learned Judge Woodward in *Matter of Osborn*, 74 A. D., cited by the learned counsel for defendant-in-error in his said brief. The learned Judge said, (Under Point VIII, in said learned counsel's brief): "This contemplates a continuance of the original Proceeding in which *all of the parties*

shall be permitted to be heard, and *not* an independent Proceeding where *all of the parties* may be *shut* out from participation."

Continuing, the learned counsel for defendant-in-error says, under Point VIII, p. 17, of said brief:

POINT

VIII.

"NO NOTICE OF THE APPLICATION FOR THE DEFENDANT-IN-ERROR'S APPOINTMENT IN 1901 IN PLACE OF PRESCOTT HALL BUTLER, DECEASED, WAS GIVEN, BUT NONE WAS REQUIRED."

> "No notice of the application for the defendant-in-error's appointment in 1901 in place of Prescott Hall Butler, deceased, was given, but none was required."

The foregoing proposition was advanced by the learned counsel for the defendant-in-error in the Court below. In support of this he states—

> "There is no Statutory requirement of notice in such a Proceeding, which is, of course, a mere substitution by the Court of one person for another as its officer. This it may always do at its discretion,"

citing *Matter of Griffin*, 5 Abb. Prac., (N. S.) 96; *Matter of Osborn*, 74 A. D., 113.

In *Matter of Griffin,* the question of *notice* was *neither involved* nor *mentioned,* in the *one-page report* of the case. It appears that the Petition was filed and a hearing had, but there is *not a word on the subject of notice,* and *why counsel cited this case, when notice is the subject of discussion, is more than we can comprehend.*
In *Matter of Osborn,* 74 A. D., 113.

Woodward, J., said:

> "It is true, by the provisions of Section 2339 of the Code of Civil Procedure, a Committee over the person of the property is subject to the direction and control of the Court by which he was appointed with respect to the execution of his duties; and that he may be suspended, removed, or allowed to resign, in the discretion of the Court, but this is a *judicial* discretion to be exercised in conformity with the rules and practice of the Courts, and *not capriciously and without a patient hearing* of all matters which legitimately bear upon the question. * * * The Code provides that in all subsequent Proceedings after the determination of the incompetency of the person, the lunatic, idiot, habitual drunkard, shall be designated 'an incompetent person.' *This contemplates* a continuance of the original Proceeding *in which all of the parties shall be permitted to be heard,* and *not* an independent Proceeding where *all of the parties may be shut out from participation.*"

This is not a ruling that no notice of an application to substitute one Committee for another need be given, but the precise and exact *opposite* thereof. To-wit: "This contemplates a *continuance* of the *original* Proceeding,

in which *all* of the parties shall be permitted to be heard, and *not* an *independent* Proceeding where *all* the parties may be *shut out* from participation."

Counsel for defendant-in-error further stated—

> "The change does not affect the substantial rights of the incompetent. If anyone is entitled to notice of such a change, it is not the incompetent who, as an adjudged incompetent, must be deemed incapable of receiving or acting upon such notice. In any event, failure to give notice of such change in no manner impairs or vitiates the jurisdiction of the Court,"

and cited *Matter of Andrews*, 192 N. Y., 514.

In *Matter of Andrews*, Willard Bradley, J., said:

> "The *parties* entitled to notice of the Proceeding for the appointment of a Committee *should have* notice of the Proceeding for his removal. * * *"

Notice to the plaintiff-in-error of the Proceeding for the appointment of Prescott Hall Butler was, we respectfully submit, absolutely *necessary*. Counsel of record in the original Proceeding, in which Butler was appointed, *recognized this* and *attempted* to give a legal notice, *although*, as we have heretofore pointed out, *the notice was illegal because the Statute under which the Proceeding was conducted did not provide for such a notice*. Therefore, the necessity of notice of the original Proceeding being conceded, *notice of the Petition to substitute defendant-in-error* in the place of Prescott Hall Butler *was necessary* under the rule *announced in Matter of Andrews, above quoted.*

YETTA SIMON, Plaintiff,

v.

JOHN N. CRAFT.

(*In extenso*, Appendix, p. 329.)

182 U. S. Supreme Court Reports, 427. Argued March 12th, 1901. Decided May 2nd, 1901.

Statement by Justice White. Writ of error to review judgment of Supreme Court of Alabama in favor of John N. Craft, which was entered by a lower State Tribunal upon a verdict rendered on the second trial of an action in ejectment wherein Yetta Simon was Plaintiff. Facts are as follows: In 1889 Plaintiff, a widow, resided in Mobile, Ala. She lived in and owned a house there, which is the real estate affected by the action of ejectment herein. January 30th, 1889, R. G. Richard, as a friend, filed in the Probate Court of Mobile County, a Petition for an inquisition of Lunacy as to Mrs. Simon, stating that she was 49, a resident of Mobile, of unsound mind and incapable of governing herself or of conducting and managing her affairs. Upon the Petition an order was entered for a hearing on February 6, 1889, and "that a Jury be drawn, as the Law directs, for the trial of this issue, and a writ was issued to the sheriff, requiring him to take the said Yetta Simon, so that he have her in Court to be presented at said trial, if consistent with the health and safety of said Simon." The writ was duly returned, with the following endorsement: "*Received January 31st*, 1889, *and on the same day I executed the within writ of arrest by taking into my custody the within named Yetta Simon and handing her a copy of said writ*, and as it is inconsistent with the health or safety of said Yetta Simon to have her

present at the place of trial, and on the advice of Dr. H. P. Herstfield, a physician whose certificate is hereto attached, she is not brought before the Honorable Court.

HOLCOMB, Sheriff."

Certificate of Dr. Herstfield.

To the Sheriff of Mobile County:

"I, H. P. Herstfield, a regular physician, practicing in Mobile County, Ala., hereby certify that I am acquainted with Mrs. Yetta Simon, and have examined her condition on yesterday and find that she is a person of unsound mind, and it would not be consistent with her health or safety to have her present in court in any matter now pending."

One Vaughan was appointed Guardian *ad litem* "in the matter of the Petition to inquire into her lunacy, and he filed an answer to the Petition of general denial and demanding strict proof according to law. Thereupon a hearing was had before a Jury, who returned a verdict that Mrs. Simon was of unsound mind and a decree to that effect was duly entered. Subsequently Richard was appointed guardian of the estate of Mrs. Simon, and by order of the Court a sale of real estate in question was ordered to pay debts of Mrs. Simon and for the support of her family. Sale made May, 1889, purchaser Henry J. Simon, who sold to John N. Craft, the defendant herein. In September, 1895, the within action in ejectment was instituted. Upon second trial Defendant Craft introduced Record of Proceedings of Probate Court upon the inquisition of lunacy, and the Record of Proceedings resulting in sale. Objections to introduction of such Records was made upon specified grounds (set forth hereafter). Objections were overruled and the Record al-

lowed to be read in evidence, to which action of the Court exception was duly taken. The approval of the Supreme Court of Alabama of this ruling is what is here complained of.

1st. In that there was no process issued notifying Yetta Simon to be present at the trial of the inquest of lunacy that was held.

2d. No provision made in or by said Proceedings whereby said Simon might be present at the inquest.

3d. In that writ of arrest for body of Yetta Simon was conditional in form and conferred upon the sheriff the power to determine whether it should be executed or not.

4th. In that said writ left it to judgment of sheriff (page 3) whether said Simon should be allowed to appear at inquest.

5th. In that said writ authorized the sheriff to restrain Yetta Simon of her liberty and deprive her of the opportunity to be heard at the inquest.

6th. In that the sheriff's return shows that under the writ of arrest he restrained Yetta Simon of her liberty and did not permit her to be present at the inquest.

7th. Because the Statute under which Yetta Simon was restrained of her liberty and deprived of her property is in conflict with Article 5 of the Amendments to the Constitution of the United States, which provides "Nor be deprived of life, liberty, or property without due process of Law" and in conflict with Article 14 of the Amendments to said Constitution.

"1a. In that it authorizes a citizen to be deprived of his or her liberty "without due process of Law."

2a. In that it authorizes a citizen to be deprived of his or her property "without due process of Law."

"8th. Because Proceedings in Probate Court are irrelevant and immaterial to any issue in the cause.

Opinion: White, Justice:

"In the Proceedings to inquire into the sanity of Mrs. Simon the writ which issued to the sheriff was evidently based upon the following clause of Section 2393 of the Civil Code of 1886: Section 2393. The Judge of Probate * * * must also issue a writ directed to the sheriff to take the person alleged to be of unsound mind, and if consistent with his health or safety, have him present at the place of trial. The invalidity of the Proceedings in the inquisition of lunacy which formed the basis of the Proceedings for sale of property is in substance, predicated on the contention that the writ directed to the sheriff authorized that official to determine whether it was consistent with the health and safety of Mrs. Simon to be present (page 4) at the trial; that the sheriff decided this question against her, and she was detained in custody and not allowed to be present at the inquest. This latter claim is founded upon the return endorsed by the sheriff on the writ directed to him. *At the trial below there was no offer to prove by any form of evidence that Mrs. Simon was in fact of sound mind when the Proceedings in Lunacy were instituted or that she desired to attend and was prevented from attending the hearing, or was refused opportunity to consult with and employ counsel to represent her.* The entire case is thus solely based on the inferences which are deduced, as stated, from the face of the return of the sheriff. And upon the assumptions thus made it is contended that the Statute, as well as the Proceedings thereunder, were violative of the clause of the 14th Amendment to the Constitution of the United States, which forbids depriving anyone of life, liberty, or property without due process of Law. It is not seriously questioned that the Alabama Statute pro-

vided that notice should be given to one proceeded against as being of unsound mind of the contemplated trial of the question of his or her sanity. *As a matter of fact, a copy of the writ containing notice of the date of the Hearing of the Proceedings in Lunacy is shown by the Record to have been served on Mrs. Simon.* As early as 1870, Superior Court Alabama, *Fore* v. *Fore*, 44 Ala. 478, 483, held that the service of the writ upon a supposed lunatic was the notice required by Statute and brought the Defendant into Court, and that if he failed to avail of such matters of defense as he might have, he must suffer the effect of his failure to do so.

The contention now urged is that notice imports an opportunity to defend, and that the return of the sheriff conclusively established that Mrs. Simon was taken into custody (page 5), and was hence prevented by the sheriff from attending the inquest or defending through counsel, if she wished to do so in consequence of the notice which she received. It seems, however, manifest, as it is fairly to be inferred the State Court interpreted the Statute, that the *purpose* in the command of the writ, "to take the person alleged to be of unsound mind, and if consistent with her health or safety, have her present at the place of trial," was to enforce the attendance of the alleged *non compos*, rather than to authorize a restraint upon the attendance of such person at the Hearing. In other words, that the detention authorized was simply such as would be necessary to enable the sheriff to perform the absolute duty imposed upon him by the Law of bringing the person before the Court, if, in the judgment of that officer, such person was in a fit condition to attend, and hence it can not be presumed, *in the absence of all proof or allegation to that effect*, that the sheriff in the discharge of his duty, after serving the writ upon the alleged lunatic, exerted his power

of detention for the purpose of preventing her attendance at the hearing, or of restraining her from availing herself of any and every opportunity to defend which she might desire to resort to, or which she was capable of exerting. *The essential elements of due process of Law are notice and opportunity to defend.* In determining whether such rights were denied, we are governed by the substance of things and not by mere form. *Louisville & N. R. Co.* v. *Schmidt,* 177 U. S. 230; 44 L. ed., 747, 20 Sup. Ct. Rep. 230. We can not, then, even on the assumption that Mrs. Simon was of sound mind and fit to attend the Hearing, hold that she was denied due process of Law by being refused an opportunity to defend, when, in fact, actual notice was served upon her of the Proceedings, and when, *as we* construe the Statute, if she had chosen to do so, she was at liberty to make such defense as she deemed advisable. (Page 6.) The view we take of the Statute was evidently the one adopted by the Judge of the Probate Court, where the Proceedings in Lunacy were heard, since that Court, upon the return of the sheriff, and the failure of the alleged lunatic to appear, either in person or by counsel, in order to protect her interests, entered an order appointing a guardian *ad litem* "in the matter of the Petition to inquire into her lunacy;" and an answer was filed by such guardian, denying all the matters and things stated and contained in the petition and requiring strict proof to be made thereof according to Law.

It is also urged as establishing the nullity of the appointment of a Guardian of the estate of Mrs. Simon, that the Proceedings failed to constitute due process of Law, because (1) they were special and Statutory, and the Petition failed to state sufficient jurisdictional facts; (2) a Jury was not impaneled as provided by

Law; and (3) there was no finding in the verdict of the Jury or the order entered thereon, ascertaining and determining all the facts claimed to be essential to confer jurisdiction to appoint a Guardian. But the due process clause of the 14th Amendment does not necessitate that the Proceedings in a State Court should be by a particular mode, but only that there shall be a regular course of Proceedings in which *notice is given* of the claim asserted, and *opportunity afforded to defend against it. Louisville & N. R. Co.* v. *Schmidt,* 177 U. S. 230, 236; 44 L. ed. 747, 750; 20 Sup. Ct. Rep. 230, and cases cited. *If the* essential requisites of *full notice* and an *opportunity to defend were present,* this Court will accept the interpretation given by the State Court as to the regularity, under the State Statute, of the practice pursued in the *particular case.* Tested by these principles we accept as conclusive the ruling of the Supreme Court of Alabama, that the Jury which passed on the issues in the Lunacy Proceedings was a lawful Jury; (page 7) that the Petition was in compliance with the Statute, and that the asserted omissions in the recitals in the verdict and order thereon were at best but mere irregularities which did not render void the order of the State Court appointing a Guardian of Mrs. Simon's estate.

Discussion of Simon *v.* Craft.

The case of *Yetta Simon, Plaintiff,* v. *John N. Craft,* 182 U. S. Supreme Court Reports 427, argued March 12, 1901, decided May 2, 1901, at first sight appears to bear a slight similarity to Plaintiff's case, but upon investigation it will be seen to be essentially different.

First. There is no hint of fraud alleged by the Plaintiff, Mrs. Simon, concerning the only Proceedings which

occurred in the matter of her lunacy. *Per contra,* Plaintiff not only hints at, but proves on the evidence—fraud, conspiracy, and perjury. *Fraud destroys everything, is a maxim of Law. Fraud changes the color of an apparently regular Proceedings into that of a highly irregular and illegal Proceedings.* The above is drawn attention to in the words of the learned Justice White as follows (page 333): "And hence it can not be presumed, in the absence of all proof or allegation to that effect, that the sheriff, in the discharge of this duty" (the arrest and detention of Mrs. Simon, "necessary to enable the sheriff to perform the absolute duty imposed upon him by Law of bringing the person before the Court"), "after serving the writ upon the alleged lunatic, exerted his power of detention for the purpose of preventing her attendance at the Hearing, or of restraining her from availing herself of any and every opportunity to defend which she might desire to resort to, or which she was capable of exerting." *Per contra,* as Mr. Rosenblatt says in his complaint in Plaintiff's case (Record, 6), "and during the pendency of the said Proceedings (before the Sheriff's Jury in 1899) in said Supreme Court of New York, this Plaintiff was at all times under duress of imprisonment and absolutely subject to the orders and control of said corporation (popularly known as 'Bloomingdale') or of its Superintendent, and at no time during the pendency of said Proceedings was the Plaintiff free to appear, either personally or by counsel before the said Supreme Court, or any officer or officers thereof, or any Commissioner, Commissioners, or Jury thereof without the consent and direction of the said Superintendent of said Asylum, except upon the order of said Supreme Court, and no such direction was given by said Superintendent, nor was any such order of said Supreme Court made or given by said

Supreme Court, and in and during the entire Proceedings this Plaintiff, with the knowledge, consent and cooperation of said Supreme Court, and its Judges, Commissioners or Agents, was forcibly, wrongfully, unlawfully and in violation and defiance of his Constitutional rights and privileges, deprived of the power and opportunity to act, write or speak freely, and to freely communicate or consult with counsel or to appear or attend before the said Supreme Court or before its Commissioners or Jury, or to confront the parties who had instituted and prosecuted the said Proceedings in said Supreme Court, and had therein charged the Plaintiff with lunacy and incompetency, or to ascertain the nature of the charges made against him, or to hear the testimony offered in support thereof or to cross-examine the witnesses hired and produced by the Petitioners therein to give such testimony."

Second. There was but one Proceeding in Mrs. Simon's case.

Per contra, there were two in plaintiff's. In Mrs. Simon's case the sole and only Proceeding was legal, in that it did not confine the Defendant for an indefinite period before a Jury Trial was had to examine into the question of Defendants' sanity. Mrs. Simon was taken into custody January 31st, 1889, in consonance with the Petition on which an order was entered for a Hearing on February 6th, 1889, before a Jury. Thereupon a Hearing was had before a jury. *Per contra,* in Plaintiff's case, Plaintiff was taken into custody upon a final Proceedings, which Proceedings upon their face recount, as Mr. Rosenblatt says in his Complaint (Rec. 7), "that said order of March 10, 1897, was made without notice to this Plaintiff, and without any opportunity given to him to oppose or contest the making thereof, and without permission to Plaintiff to appear before said Court

in person or by counsel, but on the contrary, said Supreme Court in and by said order of March 10, 1897, expressly directed that no notice be given to the plaintiff thereof or of the application therefor." Upon said illegal Proceedings Plaintiff was confined in duress of imprisonment at "Bloomingdale"—popularly so-called—from March 13th, 1897, the day of Plaintiff's arrest and incarceration therein until, more than two years later, the Proceedings before the Sheriff's Jury in 1899 were had. That said 1897 Proceedings were utterly illegal, unconstitutional, null and void we need go no further than said case of *Simon* v. *Craft* to prove; for therein the learned Justice says (page——): "The essential elements of due process of Law are notice and opportunity to defend." Both said "essential elements of due process of Law" are glaringly, are grievously lacking, upon the face of the said Court Record in said Proceedings of March 10, 1897.

Now let us examine the situation under which the Proceedings in 1899 before the Sheriff's Jury took place. We now reach a partial parallel with Mrs. Simon's case. Said second Proceedings in 1899 slightly correspond upon their face—*but upon their face only*—with those of Mrs. Simon before the Jury. In her case she was held by a public officer who had no motive in withholding from her the opportunity to appear and be heard in defense of her rights before the said Jury. She at no time alleges that said sheriff had any motive to so withhold her, *nor does she allege that he actually did.* It is, as the learned Justice says, mere inference, mere deduction devoid of proof or even allegation of foul play upon the part of said sheriff. Now let us examine Plaintiff's case. Plaintiff was held *not by a public officer who had no motive to withhold from him the opportunity to appear and be heard in defence of*

his rights, but, on the contrary, by the paid officers of a private corporation, popularly called "Bloomingdale," which said private corporation was, upon the above evidence, unlawfully mulcting Plaintiff of the sum of over five thousand dollars per annum for board and alleged Medical attendance, etc., and had so mulcted Plaintiff of the sum of over ten thousand dollars up to said time.* Moreover, Plaintiff had frequently warned said officers of said private corporation that he would, upon his case getting to Court, bring suit for heavy damages against said corporation for false imprisonment. The parallel between Plaintiff's case and Mrs. Simon's here, therefore, comes to an abrupt end. Moreover, *that the Petitioners,* who had placed Plaintiff in said Asylum in 1897, *had a motive* to keep him there and to continue through a third party—the falsely alleged Committee of Plaintiff's person and estate, to be appointed at said 1899 Proceedings—had a motive to continue the said mulct of Plaintiff's property by said Asylum *is proved* by the affidavit of said Egerton L. Winthrop, Jr., of said Petitioner's counsel, in said 1899 Proceedings in said Decretal Order filed June 23rd, 1899, in which he admits that the reason why his firm were compelled to conduct the said Proceedings "with great care and much attention" was *because Plaintiff had threatened to take legal steps to procure Plaintiff's release from imprisonment.* Why should Petitioners find it necessary to conduct said Proceedings with *"great care and much attention,"* except for fear that Plaintiff should have an opportunity to actually have his day in Court and expose their conspiracy, fraud, and perjury, as Plaintiff is about to do now; that, in spite of said Petitioners, Plaintiff has achieved the possibility of a

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*Twenty thousand before his escape.

day in Court. Plaintiff was thus between two fires. Plaintiff was thus between the Petitioners, who had a motive to prevent his getting to Court for fear they would be shown up thereby, and Plaintiff was thus between the said officers of the said asylum, who, with their employers, had a two-fold motive to withold him from Court (a) lest the said more than five thousand dollars per annum mulct (page 5) should thereby cease and determine, (b) lest Plaintiff should bring and win a heavy damage suit against them for false imprisonment. A very different situation surely from that of Mrs. Simon between R. G. Richard, her Petitioner, against whom she at no time alleges foul play, and the said sheriff.

Third. In strong contrast to the action of the said New York Supreme Court and the said Commissioners and Jury, upon Plaintiff's non-appearance in person or by counsel at said Proceedings in 1899, the Court, in Mrs. Simon's case, "in order to protect her interests, entered an order appointing a guardian *ad litem*," in the matter of the Petition to inquire into her lunacy" (page 334), and moreover, the said learned Justice emphasizes the importance of the said citations by quoting them as above. No such Guardian was appointed by said New York Supreme Court nor by said Commissioners and Jury in Plaintiff's said partially parallel Proceedings in 1899. The parallel between Mrs. Simon's case and Plaintiff's here definitely comes to an end, for Mrs. Simon, by the said appointment of said Guardian *ad litem*, did appear by said Guardian *ad litem* before said Jury. Whereas Plaintiff having no such Guardian *ad litem appointed*, and not appearing personally, did *not* appear before said Commissioners and Jury. The opportunity which was afforded by the Court to Mrs. Simon to appear by counsel—by said Guardian *ad litem*—was em-

phatically not afforded Plaintiff. Plaintiff therefore did not, as Mrs. Simon did, have his Constitutional privilege of due process of Law to appear and be heard, or, in the learned Justice's words, "an opportunity to defend." That the said Guardian *ad litem,* the said Vaughn performed his duty honorably must be taken as proved since Mrs. Simon has at no time criticized his performance of said duty.

Lastly. The learned Justice says (page 332): "At the trial below" (and we may add at no subsequent period) "there was no offer to prove by any form of evidence that Mrs. Simon was, in fact, of sound mind when the Proceedings in Lunacy (page 6) were instituted, or that she desired to attend, and was prevented from attending the hearing, or was refused opportunity to consult with and employ counsel to represent her." How differently that sounds from the affidavit aforesaid of said Petitioners' counsel in said 1899 Proceedings, in which he admits that the reason why his firm were compelled to conduct the said Proceedings with "great care and much attention" was *because Plaintiff had threatened to take legal steps to procure his release from imprisonment.*

In conclusion. To quote the learned Justice (page 333): "As early as 1870 the Supreme Court of Alabama, *Fore* v. *Fore,* 44 Ala., 478, 483, held that the service of the writ upon a supposed lunatic was the notice required by Statute and brought the Defendant into Court, and that if he failed to avail himself of such matters of defense as he might have he must suffer the effect of his failure to do so." Such service was—*provided the Alabama Statute was the same in* 1870 *as in the Simon case*—while the party was under the custody of an impartial officer, presumably, to-wit, the sheriff, who, presumably, would have no motive to throw ob-

stacles in said party's way to prevent said party's appearance in person or by counsel in Court to defend himself. Upon the above hypothesis of fair play upon the part of the sheriff, said party would have as fair an opportunity to procure counsel or to be present in Court, or both, as an alleged criminal in the custody of the same sheriff had by law. Not so, however, in plaintiff's case, as shown above. The parallel between "the service of the writ" in Mrs. Simon's case and Plaintiff's falls to the ground, so soon as one examines the circumstances aforesaid. The Alabama Supreme Court knowing that, presumably, the sheriff would have no motive to prevent the party's access to counsel; no motive to open said party's letters; no motive to forbid said party's sending letters unopened and unread (page 7) by said sheriff, naturally presumed that, in the absence of charges of foul play, of course, said party was as good as brought into Court by "the service of the writ" if said party cared to go to Court. Not so, however, in Plaintiff's case where the writ was served when Plaintiff was in false imprisonment at the hands of parties whose rules were that no mail of any kind could leave the said Asylum without being previously read and *approved of* by the said officers of said private corporation, said "Bloomingdale," popularly so-called. In Alabama the service of the writ presumably *does* bring the Defendant into Court, as shown above. In New York, on the other hand, the service of the writ presumably does not, as shown above.

The only points made by Mrs. Simon's counsel which appear well made are points 2nd, 4th and 5th, but *said points* have no weight under the said circumstances, since, as has been said, the learned Justice pointed out that Mrs. Simon *never once hinted at foul play,* and foul play is what makes said points of interest.

Point 2d. "No provision made in or by said Proceed-

ings whereby said Simon might be present at the inquest."

Point 4th. "In that said writ left it to the judgment of sheriff whether said Simon should be allowed to appear at inquest."

Point 5th. "In that said writ authorized the sheriff to restrain Yetta Simon of her liberty and deprive her of the opportunity to be heard at the inquest."

Foul play is not only hinted, but proved in Plaintiff's case, and he hangs all his argument in his brief for notice, and opportunity to appear and be heard; and the intervention needed of a Jury before a person can be permanently deprived of liberty or property; and the illegality of trials *in absentia;* and that it is legally necessary to bring the person before the Jury, or that a Committee of the Jury view the person if the former is not possible, Plaintiff hangs all his arguments therefor (page 8) upon foul play in his special case, and plaintiff also brings authority to support his said contentions, and where necessary argument by analogy supporting Plaintiff's claim that the United States Constitution *implies* that the privileges of alleged lunatics are as carefully safeguarded as those of alleged criminals—and *are the same*—and must not be *abridged.*

If any further argument were needed to excuse the length of plaintiff's Brief, both in weight of authority and exhaustiveness of argument, it is furnished by the language of the learned Justice (page 333), which conclusively proves that said learned Justice has never had presented to him the possibilities of fraud and the temptation thereto, and the unconstitutionality of the permitting said possibilities of fraud and the temptation thereto to remain upon the Statute books of any State furnished by *abridging the privileges of alleged criminals where alleged lunatics are concerned*—possibilities

which transcend the powers of the imagination and require the hard light of fact to bring them before the mind of a tribunal. We quote. "The contention now urged is that notice imports an opportunity to defend." *This is undeniable.* But the lawyer for Mrs. Simon went astray in attempting to *infer*—in the absence of allegation of fraud by Mrs. Simon against anybody at any time—that because Mrs. Simon was taken by the sheriff into custody she "was hence prevented by the sheriff from attending the inquest or defending through counsel, if she wished to do so, in consequence of the notice which she received." It, of course, does not follow *ipso facto* that *because* the sheriff had her under arrest that he therefore prevented her from defending herself by counsel or from going to Court. Here is where the said lawyer went astray in his argument.

The learned Justice continues: "It seems, however manifest—as it is fairly to be inferred the State Court interpreted the Statute—that the purpose in the command of the (page 9) writ, 'to take the person alleged to be of unsound mind, and, if consistent with her health or safety, have her present at the place of trial,' was to enforce the attendance of the alleged *non compos*, rather than to authorize a restraint upon the attendance of such person at the Hearing." The above is undoubtedly "the purpose in the command of the writ," but, it may well be asked, *what is to prevent a dishonest sheriff from acting otherwise?** In a criminal case

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*It is not what *has* been done, or *ordinarily would* be done under a Statute, but what *might* be done under it that determines whether it infringes upon the Constitutional right of the citizen. The Constitution guards against the *chances* of infringement." *Bennett* v. *Davis*, 90 Me., 37 Atl. 865, cited in *Re* W. H. Lambert, Cal., L. R. A. 55 (1902) *supra*. And again, Earl, J., in *Stewart* v. *Palmer*, 74 New York, *supra:* "The Constitutional validity of Law is to be tested, not by what *has* been done under it, but by what *may*, by its authority, be done."

would it be heard that the sheriff decided that the alleged burglar was physically unable to attend Court and *thereupon* judgment was taken against the said alleged burglar, and he was tried *in absentia* and imprisoned for, say ten years, without an actual *bona fide* confrontation of Judge, Jury and witnesses upon his part? Why should the privileges of an alleged criminal throw more safeguards around his liberty, more formality than those of an innocent alleged lunatic?

We quote the learned Justice (page 332) to wit: "At the trial below there was no offer to prove by any form of evidence that Mrs. Simon was, in fact, of sound mind when the Proceedings in Lunacy were instituted, or that she desired to attend, and was prevented from attending the Hearing, or was refused opportunity to consult with and employ counsel to represent her. *The entire case is thus solely based on the inferences* which are *deduced*, as stated, from the face of the return of the sheriff, and upon the assumptions thus made it is contended that the Statute, as well as the Proceedings thereunder, were violative of the clause of the 14th Amendment to the Constitution of the United States, which forbids depriving anyone of life, liberty, or property without due process of law." *Per contra*, Plaintiff contends upon proved facts upon Court Records, not upon *"assumptions."*

At the trial below—the Proceedings had at Charlottesville, (page 10) in the County of Albemarle, in the State of Virginia, before the County Court of Albemarle, aforesaid, November 6th, 1901—there was every offer to prove by every form of evidence that Plaintiff was, in fact, of sound mind when the said Proceedings of November 6th, 1901, to inquire into Plaintiff's sanity and competency were had. At the present trial there has been every offer to prove that Plaintiff was, in fact, of sound mind when the Proceedings in New York City

were instituted March 10th, 1897, and when the Proceedings in New York City were instituted in 1899, and that Plaintiff desired to attend, and was prevented from attending the said Hearings, and was refused opportunity to consult with and employ counsel to represent him.

CONCLUSION

It must, therefore, be apparent that the plaintiff-in-error, a citizen and resident of Virginia, one of the sovereign States of this great Union, whose sanity has been decreed by one of the courts of that sovereign State, cannot be required to submit the question of his sanity to the courts of the State of New York, of which State he is not a resident, but which State, through its courts, is wrongfully withholding plaintiff-in-error's property from him.

We have here diverse citizenship, and the case is one which the Federal courts should take cognizance of, and in which they should grant full relief.

Here we have two judgments rendered by courts of equal rank, in two different States, but the later judgment, rendered by the court of Virginia, declares that plaintiff-in-error is sane; and his conduct during the fifteen years which have elapsed since that judgment was rendered duly demonstrates his sanity and his capacity to manage his property and affairs. He also respectfully submits that the contents of this brief, composed by him, do not represent the work of a madman or an incompetent. On the other hand, he submits the same as a demonstration of his mental capacity and qualifications.

He submits that, under the full-faith-and-credit clause of the Constitution, the later decree, rendered by the court of Virginia, is the controlling decree and entitles him not only to his property in the State of Virginia, but to his property in every other State of the Union.

If the Congress should enact a law on this subject, specifically declaring that the later of two judgments shall be the controlling one, and, from its date supersedes the prior judgment of the other State, would not the Federal courts, including this great and honorable

court, the Supreme Court of the United States, hold such a law constitutional and enforce the same? We respectfully submit that such a law might well provide as follows:

> "That lunacy is not necessarily permanent; that in the event of successive judgments being rendered by the courts of different States regarding the sanity of a citizen, the later judgment, from and after its date, shall be the controlling one and shall supersede the other; and that, if a person has been adjudged insane in one State, and thereafter is adjudged sane in another State of which he is a legal resident, any property owned by him which is withheld from him by the courts of the former State, or by the authority of a decree thereof, shall be surrendered to him upon due proof of the later decree of the courts of the State of his residence holding him to be sane."

However, we respectfully submit that no such enactment is necessary. The Constitution requires that the Virginia decree be recognized. Plaintiff-in-error, being a resident of Virginia, it is unreasonable to expect him to submit his rights to the courts of New York, in which he has already suffered so much; and the only tribunals in which he can seek full and complete justice, without going into the courts of the State of New York, are the great Federal courts, at the bar of the greatest of which he now stands seeking justice.

Respectfully submitted,

JOHN ARMSTRONG CHALONER,

Pro Se.

In the Supreme Court of the United States

OCTOBER TERM, 1916

No. 121

JOHN ARMSTRONG CHALONER, Plaintiff-in-Error,

against

THOMAS T. SHERMAN, Defendant-in-Error.

BRIEF OF PLAINTIFF-IN-ERROR.

JOHN ARMSTRONG CHALONER, *pro se.*

DEPOSITION 1908, VOLUME I.

Deposition of John B. Dickinson and others taken before me, L. D. Booth, a notary public in and for the county of Albemarle, Virginia, at the Colonial Hotel, Charlottesville, Albemarle county, Virginia, on the 14th day of October, 1908, commencing at 10 o'clock A. M., in pursuance of the annexed notice, which is marked "Exhibit A," for the use at the trial of the above entitled action on behalf of the plaintiff.

APPEARANCES: For the Plaintiff—GEORGE C. GREGORY, WILLIAM D. REED, attorney of record, (JOHN ARMSTRONG CHALONER, of Counsel), for the Defendant—JOSEPH H. CHOATE, JR.

By consent of Joseph H. Choate, Jr., attorney for the defendant, and William D. Reed, attorney of record for the plaintiff, the hearing was adjourned to the banquet hall of the Masonic Temple in Charlottesville, Albemarle county, Va., at 2:30 P. M., on Wednesday, the 14th day of October, 1908.

COLOR OF PLAINTIFF'S EYES.

Testimony John B. Dickinson, M. D., pp. 2-6.

JOHN BYVANCKE DICKINSON, being first cautioned and duly sworn to testify the whole truth, deposes and testifies as follows:

1st Q. By Counsel for Plaintiff: Please give your name and age.

A. John Byvancke Dickinson, 38.

2d. Q. Where do you now reside?

A. Hamilton, Bermuda.

3d. Q. What is your profession?

A. Practice of medicine, physician.

4th Q. Where did you get your professional education?

A. Richmond, Va.

5th Q. How long have you been practicing medicine?

A. 15 years.

6th Q. Do you make a speciality of any branch of medicine?

A. Eyes, ears, nose and throat.

7th Q. How long have you made a specialty of the eyes, ears, nose and throat,

A. 10 years.

8th Q. During those 10 years where have you practiced?

A. 2 years in Columbus, Ohio, 8 years in Bermuda.

9th Q. Are you now in active practice?

A. I am.

10th Q. In addition to your private practice, do you do any work for the English government?

A. Yes, I do work for the English Navy and English Army—R. N. and R. A. M. C.

11th Q. How long have you known the plaintiff in this case?

A. I have known him intimately, that is well acquainted

with him, for 15 years; been acquainted with him for about 17 years.

12th Q. Have you seen much of the plaintiff recently?

A. Quite a good deal in the last month.

13th Q. Please state what is the present color of the plaintiff's eyes?

A. Grayish brown.

14th Q. Are the colors gray and brown blended in the iris or are they separate and distinct?

A. Separate and distinct.

15th Q. Which of the two colors covers the whole circle of the iris?

A. Gray, that is towards the periphery.

16th Q. Does the gray show decidedly and distinctly?

A. Very decidedly and distinctly.

17th Q. About what proportion of the iris is gray and what proportion brown?

A. Well, the contracted pupil, I should say, is two-thirds gray and the other one-third brown.

18th Q. Is it or not unusual for the color of one's eyes to change?

A. Rather unusual.

19th Q. Have you ever in your own personal experience known of a case in which one's eyes changed color?

A. I have.

20th Q. Please state that case.

A. The case was an instance of an army officer who was in the South African War. I refracted his eyes before he left for the war in South Africa, and when he returned in about three years on referring to my notes I found that such was the case—that they had gone from brown, as I had registered them, to a grayish brown.

CROSS-EXAMINATION.

1st Q. By Counsel for Defendant: Mr. Dickinson, in the case of the army officer of whom you have just spoken,

how did you account for the change in the color of his eyes?

A. As a matter of fact, the color of the eyes is a thing in which very little interest has been taken in ocular work, and there is very little literature on the subject, and very little to account for it. He himself said he thought it was due to his hardships and constant attention to the guns, and he was himself not aware of the change in the color of his eyes.

(Counsel for Defendant: I think we should strike out everything in the answer except the doctor's own reasons, and not to allow to remain in what the army officer told him.)

2nd Q. Then you have no personal theory on the subject?

A. No, I have no personal theory.

3rd Q. You said that when the pupil of the plaintiff's eyes were contracted two-thirds of the iris was gray?

A. I did.

4th Q. Does that mean when the pupil is of its normal size?

A. The normal size is hard to state. Lights and different conditions have an effect upon them, though we have no actual data.

5th Q. Was your examination of the plaintiff's eyes when the pupils were contracted made in a bright light?

A. Yes, sir.

6th Q. And the eye would appear darker in a less bright light?

A. Not absolutely, but you might say a little more in a bright light than in a dull light.

And further this deponent saith not.

Note.—It is hereby stipulated and consented that the formal signing of the deposition of Dr. John B. Dickinson is hereby expressly waived by counsel for the defendant and plaintiff.

PLAINTIFF SANE AND COMPETENT BEFORE AND DURING FEBRUARY, 1907.

Testimony Charles E. Dickinson, pp. 7-8-12-20-21.

CHARLES E. DICKINSON, being first cautioned and duly sworn to tell the whole truth, deposes and testifies as follows:

1st Q. By Counsel for Plaintiff: Please give your name and age.

A. Charles E. Dickinson, 51.

2nd Q. Where do you reside?

A. Richmond, Va.

3rd Q. Where did you reside in 1896 and 1897?

A. "Rougemont," Albemarle County, Va.

4th Q. Is Cobham the postoffice for your home, "Rougemont"?

A. That is where it was for a great many years, but we have recently changed it to Cismont, which is a little nearer and more convenient.

5th Q. How far is "Rougemont" from the plaintiff's home, "The Merry Mills"?

A. I should say a little over two miles; I have never measured it.

6th Q. Did you necessarily spend much of your time near the plaintiff's residence in Albemarle County, Va., in 1897?

A. I was at "Rougemont" the whole of 1896, 1897 and 1898.

7th Q. What is your present occupation?

A. Civil engineer.

8th Q. By whom are you now employed?

A. Virginia Passenger and Power Co., of Richmond, one of the Gould systems of electric railways.

9th Q. How long have you known the plaintiff in this case?

A. About 15 or 20 years—probably 20 years.

10th Q. Did you know the plaintiff well and see him prior to February, 1897, when he went to New York with Stanford White?

A. Yes, I saw him on various occasions; I would call at his house and he would call at my house. I saw him quite often.

11th Q. When and where did you see the plaintiff prior to February, 1897, and under what conditions?

A. I saw him at his home, "The Merry Mills," where I often saw him and transacted business with him, or something on that order.

12th Q. Did you know him in a social way, as well as business way?

A. Oh yes, we would go around through the neighborhood and attend social functions together.

18th Q. Did you also have business relations with him?

A. Yes, sir, on several occasions. On one occasion I remember there were some colored people in our neighborhood who wanted to build a church steeple, or tower, to their church, and on their behalf I applied to Mr. Chaloner to aid them financially. He went very particularly into the details, was very much interested in the welfare of the people; was perfectly willing to help them along, and gave me a check for $150 toward that tower, which I afterwards

19th Q. What time was this that you saw him?

A. That was in the fall of 1896.

20th Q. How frequently did you visit the plaintiff's home prior to his going to New York in February, 1897?

A. I had no special time; dropped in on him most any time going to Cobham or Cismont, or any of those places.

21st Q. Did you call frequently or infrequently?

A. Perhaps every two weeks, something like that; I don't remember.

22nd Q. What, in your opinion, was the plaintiff's mental condition when you last saw him prior to his going to New York in February, 1897?

(By Mr. Choate: I object to that question on the ground that the mental condition of the plaintiff at the time specified is immaterial; I object on the further ground that the witness is not qualified to express an opinion as to the mental condition and that the question should call merely for the witness's characterization of the acts which he had himself observed.)

23rd Q. Mr. Dickinson, from the acts that you had observed in the fall and autumn of 1896, and from your business relations with the plaintiff, and from all your observations of him, have you formed any opinion as to whether the plaintiff was rational or irrational at that time?

A. Yes, I have formed an opinion.

(By Mr. Choate: I object on the grounds that the witness's opinion is incompetent and irrelevant, and to the form of the question, which calls for the witness's opinion of the condition of the plaintiff.)

24th Q. From what you observed in the fall and autumn of 1896 in your business dealings with the plaintiff and on the occasions when you called at his home will you characterize whether in your opinion the acts of the plaintiff were rational or irrational?

(By Mr. Choate: Same objection as to the competency of the witness.)

A. Perfectly rational in all my dealings with him, which covered a period of years.

25th Q. Please state fully, if you desire, the acts and circumstances that lead you to make the answer that in your opinion you would characterize the acts and bearing of the plaintiff as perfectly rational?

A. I have had several business transactions with him and in all of these transactions he went into the details and

seemed to understand the situation thoroughly, consistentl and every other way, and I did not form any other opinio except that he was all right mentally.

26th Q. Were any of your dealings with the plainti during the early part of the year, 1897?

A. Early part of the year, 1897?

27th Q. Yes, February, 1897, or January, about tha time?

A. No, I had no business dealings with him at that tim

28th Q. Did you have social intercourse with him?

A. Yes, I saw him occasionally.

30th Q. You saw him occasionally in the month of Feb ruary, 1897?

A. Yes, sir.

31st Q. And you base your conclusions on what you saw at that time and times prior thereto?

A. Yes, sir, I remember calling there, and he was very busy; said I would have to excuse him; said he was attend ing to his Roanoke Rapids business, business in New York and other places, and that he was a little behind in his work and could not give me much of his time.

32nd Q. Did you at any time prior to his going to New York in February, 1897, see anything about his acts, looks or speech that indicated that he was dangerous or insane?

(By Mr. Choate: I renew the former objections as to calling for the opinion of the witness.)

A. No.

33rd Q. Did you on any of your visits to the plaintiff's residence prior to his going to New York in February, 1897, see a darkey in uniform, or otherwise, parading up and down at the plaintiff's house, with a rifle, or see anything to indicate that the plaintiff's house was barricaded?

A. There is no foundation, sir, for such a report.

34th Q. Do you mean to say that you did not see any

thing to indicate that the house was barricaded, by your answer?

A. Nothing in the world, and I have been there quite often.

35th Q. Where was the plaintiff's residence and legal domicile at the time he went with Stanford White to New York in February, 1897?

(By Mr. Choate: I object to that as calling for conclusions.)

A. In Albemarle County, Va., and his domicile at "The Merry Mills."

36th Q. Can you give any facts which would justify you in stating that the plaintiff's residence and domicile was at "The Merry Mills" in Albemarle County, Va.?

(By Mr. Choate: I object to that on the same grounds as above, that it calls for conclusions, is leading and also immaterial.)

A. He had been tax-payer in the county for years and lived in the county, and was always enthusiastic for the development of the county and the welfare of the people. He ordered me to build him a bathing pool 110 feet long and 20 feet wide, to hold 10,000 gallons of water; I put in the big pumps at the house to pump water in his house, and superintended the remodeling of his house, put him in a hot and cold water heating system, and various other things which I would not have had done if it had not been his home.

37th Q. Then in your opinion did Mr. Chaloner avail himself of those improvements which he had placed in his house at the "Merry Mills"?

(By Mr. Choate: I make the same objection as above, that the question calls for conclusions and is immaterial.)

A. Yes, sir.

38th Q. And from what you saw and what you did with the residence at "The Merry Mills," would you characterize such abode as his residence or domicile?

(By Mr. Choate: Same objection.)

A. Yes, sir.

39th Q. In your business dealings with the plaintiff and your conversations with him regarding business matters, did you form any opinion as to his business ability and his ability to manage and take care of his property and affairs?

A. Yes, sir.

40th Q. Please state what, in your opinion, the character of his business ability was, basing your answer upon what you personally observed, and of your own knowledge?

(By Mr. Choate: I object to the question as calling for the conclusion of the witness, as incompetent and immaterial.)

A. I always found him careful and conservative; he always struck me as a man above the average in intellect, of fine business attainments, just, liberal and considerate at all times, and he struck me as being perfectly competent to manage his own affairs under all conditions.

41st Q. In your opinion, from your dealings with the plaintiff, was he careless or careful?

(By Mr. Choate: I object to the question as incompetent and immaterial.)

A. Perfectly competent to manage his own affairs.

42nd Q. When did you see the plaintiff again after February, 1897?

A. It was before the Albemarle proceedings; I think it was in 1901, latter part of the summer or fall.

43rd Q. What, in your opinion, was the plaintiff's mental condition when you saw him at that time?

(By Mr. Choate: I object to that question on the ground that the plaintiff's mental condition at that time is immaterial; that the witness is incompetent to express his opinion on the same.)

A. Why, he was very glad to return to Albemarle County, I know; he was looking better than I ever saw him, and he was certainly perfectly sane, no doubt about that.

44th Q. From what you observed in your intercourse with the plaintiff in 1901, prior to the Albemarle County proceedings, did you form any opinion as to whether he was rational or irrational?

A. I formed an opinion.

45th Q. Please state what your opinion was, characterizing whether he was rational or irrational, basing your answer upon your own personal intercourse with him, and from what you observed?

(By Mr. Choate: Objected to on the same grounds as when the opinion of the witness was called for.)

A. I pronounced him rational.

46th Q. State in detail what acts, intercourse, business dealings, looks or speech, lead you to characterize the plaintiff's acts as perfectly rational in 1901, before the Albemarle County proceedings?

A. I travelled around with him a good deal, went with him to Washington, Richmond and Weldon, N. C. At Weldon he was resident director of the Roanoke Rapids Power Co. He showed me through the works, the brick kilns; showed me the lay of the town, the construction of the mill property and about everything connected with it, in a very clear and concise manner.

47th Q. Did you eat with him at the same table?

A. Yes, sir, at the same table.

48th Q. Did you sleep in the same hotel with him?

A. Yes, in the same hotel and in the same room.

47th Q. Did you travel in the same car with him?

A. Yes, sir, and had every opportunity to observe him.

48th Q. You say you occupied the same room with him

A. I occupied the same room with him in Richmond.

49th Q. Please state what the Roanoke Rapids plant consisted of?

A. It was a young town then, just in its infancy, you might say. He took great pride in it—showed me the colonial cottages they were putting up, the width of the streets which were very wide, and especially in the factory itself and the power that was to drive the machinery.

50th Q. Was there a brick kiln?

A. Yes, sir.

51st Q. Any planing mills?

A. I don't remember.

52nd Q. Do you remember whether the plaintiff was resident director at that time?

A. Yes, sir.

53rd Q. Who was the managing director?

A. Major Emry.

54th Q. What is his name?

A. I don't remember his first name.

55th Q. What position was offered to you at that time in connection with the plant?

A. The position of resident engineer was offered to me at that time.

56th Q. And in considering the advisability of taking the position you acted in conjunction with the plaintiff?

A. Yes, in order for me to understand what my duties would be it was necessary for him to tell me what they would be.

57th Q. What year was it you were offered the position of resident engineer?

A. I think 1893 or 1894, I don't remember exactly.

58th Q. Might it not have been a little later?

A. I think probably it was, in 1895, because in 1896 I was more closely connected with "Rougemont."

59th Q. Did you or not form a favorable opinion of that plant?

(By Mr. Choate: I object, because it is immaterial and the witness is incompetent to express an opinion on that matter.)

60th Q. Mr. Dickinson, state what are your qualifications as an engineer, are you a graduate engineer?

A. No, picked up in the field.

61st Q. How many years have you been in the field?

A. About 25 years.

62nd Q. Have you had experience in this branch of engineering and the work it required?

A. Yes, sir.

63rd Q. Did you form any estimate of the value of the plant at Roanoke Rapids?

A. Yes, sir.

64th Q. And from what you saw and observed there, will you please characterize, as far as you are able, the value and the future of the Roanoke Rapids plant?

(By Mr. Choate: I object on the ground that it is incompetent and that the conclusion asked for is immaterial.)

A. It struck me as full of splendid possibilities.

65th Q. Are you the C. E. Dickinson who testified in the Albemarle County, Virginia, proceedings on November 6th, 1901?

A. Yes, sir.

66th Q. Was the evidence you gave in that proceeding in any way prejudiced or biased?

A. Strictly facts, well considered.

67th Q. What, in your opinion, was the plaintiff's residence and legal domicile at the time the Albemarle County, Virginia, proceedings were commenced?

(By Mr. Choate: Same objection.)

A. Albemarle County.

68th Q. Was he sleeping and eating in Albemarle County, Va., at that time.

A. Yes, sir.

CROSS-EXAMINATION.

1st Q. By Counsel for Defendant: Have your relations with the plaintiff been uniformly pleasant throughout your dealings with him?

A. Yes, sir.

2nd Q. Never had any altercation with him?

A. No, sir.

3rd Q. He has employed you in your profession on several occasions?

A. Yes, sir.

4th Q. And you have always had a high regard for him and have now?

A. Yes, sir.

5th Q. Did you go to his house on the fortnight before he left for New York in 1897?

A. Yes, I was there with James Lindsay Gordon, of New York.

6th Q. How long before the plaintiff left?

A. Probably 2 or 3 weeks, something like that.

7th Q. Within the fortnight, or not?

(By Mr. Reed: I object, you already have the answer.)

8th Q. I simply want to know when was the last time you were there before the plaintiff went to New York in 1897?

(By Mr. Reed: I submit that the question is already answered, and he said within the fortnight before he went to New York.)

A. I don't remember exactly when it was, did not keep any account.

9th Q. You can't be sure whether it was within the two weeks?

A. No, nor three weeks, it was a very short time before he left for New York.

10th Q. Have you at any time had any experience with irrational persons?

A. No, I have never been in a lunatic asylum, or anything like that.

11th Q. I mean you did not have any friends that were irrational?

A. No, sir.

RE-DIRECT EXAMINATION.

1st Q. By Counsel for Plaintiff: When you answered on your direct examination that, in your opinion, the plaintiff was perfectly rational, and when you stated that you had formed your judgment in that respect by reason of the calls you had made on him, and your business dealings with him, and your intercourse with him, did you include in your answer the fortnight before he went to New York in February, 1897?

A. I included all the time within which I have known him.

2nd Q. Then your answer was made of your knowledge of him within the fortnight up to the time he went to New York?

A. Yes, sir, up to the time I last saw him before he went to New York.

3rd Q. You remember by the fact that you accompanied Mr. James Lindsay Gordon to his home?

A. Yes, sir.

And further this deponent saith not.

PLAINTIFF SANE AND COMPETENT BEFORE AND DURING FALL OF 1896.

Testimony J. Penn Morris, 28-29-36.

JOHN PENN MORRIS, being first cautioned and duly sworn to testify the whole truth, deposes and testifies as follows:

1st Q. By Counsel for Plaintiff: Please give your name and age.

A. John Penn Morrs, 47.

2nd Q. Where do you reside?

A. Washington.

3rd Q. Where did you reside in 1895, 1896 and 1897?

A. Roanoke Rapids, N. C.

4th Q. What is your present occupation?

A. Special agent for the Department of Commerce and Railway.

5th Q. For the United States Government?

A. Yes, sir.

6th Q. How long have you been in the service of the United States Government?

A. About 8 years.

7th Q. How long have you known the plaintiff in this case?

A. I suppose 15 or 18 years.

8th Q. Did you know him well before February, 1897?

A. Yes, sir.

9th Q. Did you know him well in 1895 and 1896?

A. Yes, sir.

10th Q. Where did you see and know him during those years?

A. Mostly in Roanoke Rapids, N. C.

11th Q. What was your position then?

A. Superintendent of the Roanoke Rapids Power Co., at that place.

12th Q. What connection, if any, did the plaintiff have with that company at that time?

A. He was the resident director of the Roanoke Rapids Power Company.

13th Q. As a part of your business did you also keep the books of the Company?

A. Yes, sir.

14th Q. Who signed the checks of this company during 1896?

A. Mr. Chaloner, and I countersigned them.

15th Q. Did you see much of the plaintiff during the year 1896?

A. Used to see him very often.

16th Q. Did you accompany him to New York in the fall of 1896?

A. No, I did not; I was in New York, but I did not accompany him there.

17th Q. Were you with him during the time you were in New York in 1896?

A. For a week I saw him constantly.

18th Q. What time was that?

A. Some time in November, 1896, during the week in which they had the Horse Show.

19th Q. When you left New York where did you then go?

A. Roanoke Rapids.

20th Q. How long did you continue in Roanoke Rapids after this?

A. Until 1900.

21st Q. After returning to Roanoke Rapids from New York did you receive any communications from the plaintiff in connection with the business of the Roanoke Rapids Power Company?

A. Yes, sir.

22nd Q. Did you receive communications from him frequently?

A. I think about 3 or 4 times after I left New York in November.

23rd Q. What was the character of those communications, were they such as you had been receiving from him all the time, or was there anything unusual about them?

A. No, inquiries about the work there and directions about things.

24th Q. Did they strike you as being perfectly natural and usual?

(By Mr. Choate: I object, as it calls for the opinion of the witness, and on the ground that it is immaterial.)

A. I thought they were as usual; he was constantly writing me.

25th Q. After your return from New York in November did he continue to sign the checks as he had before that?

A. No, he was not there.

26th Q. From your personal contact with him in New York in November, 1896, and your business communications with him and business dealings with him, did you at that time form an opinion as to whether he was sane or insane, rational or irrational?

A. Yes, sir.

27th Q. State what opinion you formed after your relationship with the plaintiff, John Armstrong Chaloner, and your business dealings with him in the fall of 1896, basing your conclusons upon everything that occurred, and from your own knowledge?

(By Mr. Choate: I object to that as calling for an opinion, as immaterial and irrelevant.)

A. I thought he was perfectly sane.

28th Q. When did Mr. Chaloner cease to sign checks for the Roanoke Rapids Power Co.?

A. Just previous to his going to New York.

29th Q. In 1896?

A. Yes, I don't think that he came back to Roanoke Rapids after the Horse Show, that is my recollection of it.

30th Q. In signing checks, he signed for the necessaries of the Power Co.?

A. Necessaries, pay rolls, materials, and everything.

31st Q. He never overdrew the accounts did he?

A. No, sir.

32nd Q. Did he sign checks and conduct the business in a rational or irrational way?

(By Mr. Choate: Same objection.)

A. In my opinion in a perfectly rational way.

33rd Q. Did you receive directions from him as to what was to be done at Roanoke Rapids?

A. Yes, sir.

34th Q. In acting for the Company at Roanoke Rapids all during the year 1896, up to November, 1896, you acted under the directions of the plaintiff?

A. Yes, I did.

35th Q. After Mr. Chaloner left the Roanoke Rapids Power Co., in 1896, do you know whether or not he returned to his place, "The Merry Mills"?

A. Yes, he did, because I got some letters from him from "The Merry Mills."

36th Q. Were they business letters?

A. Yes, sir.

37th Q. Did you conduct the business under his directions from "The Merry Mills"?

(By Mr. Choate: I object to that as leading.)

A. Yes, sir.

38th Q. Were these letters that you received written by Mr. Chaloner?

A. Yes, sir, to the best of my knowledge and belief they were; he writes a very characteristic hand.

39th Q. And you conducted the business at Roanoke Rapids under his direction by letter?

A. Yes, sir.

40th Q. In your opinion, was his residence after leaving Roanoke Rapids, changed to Albemarle County?

A. Yes, sir, I thought he was a resident of Albemarle County at the time.

41st Q. Can you state any fact which would justify you in stating this his residence was Albemarle County?

A. I have heard him say a good many times that he was a resident of Albemarle County; that he was going to be a resident of Virginia; that he was done with New York.

42nd Q. Was that prior to 1897, when he accompanied Stanford White to New York?

A. Yes, sir.

43rd Q. By whom were the checks of the Roanoke Rapids Power Company signed in 1896, after Mr. Chaloner returned to "The Merry Mills"?

A. I forget who signed them after that. I believe they were signed, to the best of my knowledge, by Major Emry.

44th Q. Had not Major Emery then succeeded Mr. Chaloner as resident director?

(By Mr. Choate: I object to that as leading.)

A. Yes, sir.

45th Q. He was then managing director of the Roanoke Rapids Power Company?

A. Yes, sir.

46th Q. What position did Mr. Chaloner occupy?

A. Resident director.

47th Q. State anything you know in regard to the temprorary residence or character of Mr. Chaloner's visits to New York in November, 1896?

A. Mr. Chaloner was in North Carolina a week or so before the Horse Show in New York, and told me he was going there to spend a week or so to see the show.

48th Q. For the purpose of seeing the Horse Show?

A. Yes, sir, that is what I understood.

49th Q. When you and Mr. Chaloner were in New York at that time did you go to the Horse Show?

A. Yes, sir.

50th Q. Every night?

A. Yes, sir, every night.

51st Q. Did Mr. Chaloner stop at the hotel as transient guest?

(By Mr. Choate: I object to that as calling for the opinion of the witness.)

A. Yes, sir.

52nd Q. Do you know anything about Mr. Chaloner's dealings in live stock and horses?

A. Something.

53rd Q. Were you familiar with Mr. Chaloner's dealings in regard to horses?

A. Somewhat.

54th Q. Do you or not know whether Mr. Chaloner showed horses at the Horse Show under the name of Julian Morris?

A. Yes, sir.

55th Q. Was Mr. Chaloner interested in the display of horses shown at that show on that occasion?

A. He seemed to be.

CROSS-EXAMINATION.

1st Q. By Counsel for Defendant: Are you a relative of Mr. Julian Morris?

A. Yes, sir.

2nd Q. What was your occupation before you were engaged with the Roanoke Rapids Power Company?

A. I was in the Merchants National Bank, Richmond, Virginia.

3rd Q. How did you form your connection in the first place with the Roanoke Rapids Power Co.?

A. Mr. Chaloner offered me a position as Superintendent of the Roanoke Rapids Power Company.

4th Q. You were glad to take that position?

(Objected to by Mr. Reed, on the grounds that it is incompetent, immaterial and irrelevant.)

A. I would not have taken it if I had not been.

5th Q. It was more remunerative?

A. I thought so.

6th Q. Have you ever had any interruption of your pleasant relations with Mr. Chaloner during the 15 or 18 years you have known him?

A. None.

7th Q. Always been a good friend of yours?

A. Yes, sir.

8th Q. And you are here now because of your friendship for him?

A. Yes, sir.

9th Q. You came down from Washington for that reason?

A. Yes, sir.

10th Q. Have you had any experience with people of unsound mind, insane or irrational persons?

A. No, sir.

11th Q. None in your life?

A. No, sir.

12th Q. Have you ever discussed with Mr. Chaloner any of the history of this present litigation?

A. Yes, sir, we have spoken of it.

And further this deponent saith not.

PLAINTIFF A VESTRYMAN:

Testimony George W. Macon, 50-54.

GEORGE W. MACON, being first cautioned and duly sworn to testify the whole truth, deposes and testifies as follows:

1st Q. By Counsel for Plaintiff: Please give your name and age.

A. George William Macon, 44 years old.

2nd Q. What is your occupation?

A. Farmer.

3rd Q. Where do you reside?

A. I reside in the county.

4th Q. How far from the plaintiff's home, "Merry Mills"?

A. About 3 1-2 miles.

5th Q. Do you own the place in which you live?

A. Yes, sir.

6th Q. How large a place is it?

A. 224 acres and a fraction.

7th Q. Where did you reside in 1896 and 1897?

A. In the same neighborhood.

8th Q. At the same place?

A. No, sir.

9th Q. How far from the plaintiff's residence?

A. About 3 miles, I am about half a mile further off now.

10th Q. How long have you known the plaintiff?

A. I have known him ever since soon after he was married.

11th Q. Did you know the plaintiff well before 1897?

A. I knew him pretty well, used to see him.

12th Q. Did you see anything of the plaintiff during the year 1896?

A. Yes, sir.

13thQ. When and where?

A. Used to see him on the road and at church; would se him around the neighborhood at different places.

14th Q. What church did you see him at?

A. Grace Church.

15th. Q. Episcopal Church?

A. Yes, sir.

16th Q. Did he have a pew there?

A. He came there very often.

17th Q. Is the plaintiff a member of the same church tha you are in Albemarle County, Va.?

A. Yes, sir, he was, I think he is now.

18th Q. Was he a vestryman of this church prior to 1897

A. No, sir, I thin[illegible]as after that.

19th Q. Have you eve[illegible] served with him as vestryman o this church?

A. Yes, sir.

20th Q. How did the plaintiff act when you saw him las prior to February, 1897?

(By Mr. Choate: I object to that, on the ground tha it calls for the opinion of the witness on an irrelevant matter.)

A. Acted like he always had: I saw no difference.

21st Q. How did he look and talk when you saw him last prior to his going to New York in 1897?

(By Mr. Choate: Same objection,)

A. Looked all right as far as I could see.

22nd Q. After the relations which you have described and your intercourse with the plaintiff, Mr. John Ar[illegible]ron Chaloner, in Albemarle county, Va., did you form any opinion as to whether his acts were those of a rational or irrational man?

(By Mr. Choate: Same objection.)

A. Yes, sir.

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23rd Q. Please state what opinion you formed after such relationship and contact with the plaintiff?

(By Mr. Choate: Same objection.)

A. Formed the opinion that he was as rational as anybody I ever saw.

24th Q. Did the acts of Mr. John Armstrong Chaloner impress you that he was a rational man?

(By Mr. Choate: Same objection.)

A. They impressed me that he was a rational man.

25th Q. At any time prior to his going to New York in 1897, did you see anything about his acts, looks or speech to indicate that he was either dangerous or insane?

A. I did not.

26th Q. Did you, prior to his going to New York in 1897, ever visit the plaintiff's home?

A. No, never visited there at all.

27th Q. Was Mr. Chaloner, at the time he went to New York in 1897, a resident member of the Keswick Hunt Club?

A. I think he was, sir.

27th Q. Did you have any business dealing with the plaintiff prior to 1897?

A. No, sir; never had any business transactions with him.

28th Q. How did the plaintiff impress you as a business man when you saw him prior to February, 1897?

(By Mr. Choate: Same objection.)

A. I did not have any business with him.

29th Q. Where was the plaintiff's residence in 1896?

(By Mr. Choate: I object to that as calling for a conclusion of law.)

A. In Albemarle, at "The Merry Mills."

30th Q. Albemarle County, Virginia?

A. Yes, sir.

31st Q. Are you the same G. W. Macon who testified in the Albemarle County, Va., proceedings in November, 1901?

A. Yes, sir.

32nd Q. Was the evidence you gave in those proceedings in any way biased?

A. No, sir.

And further this deponent saith not.

PLAINTIFF A GOOD BUSINESS MAN AND JUDGE OF HORSES.

Testimony George T. Munday, 55-68.

GEORGE T. MUNDAY, being first cautioned and duly sworn to testify the whole truth, deposes and testifies as follows:

1st Q. By Counsel for Plaintiff: Please give your name and age?

A. George T. Munday, 56 years.

2nd Q. Where do you reside?

A. Barboursville, Orange County, Va.

3rd Q. Where did you reside from 1887 to 1896?

A. In Albemarle, at "Castle Hill."

4th Q. What is your occupation now?

A. I am handling horses and cattle and running a boarding house or hotel.

5th Q. What was your occupation from 1887 to 1896, including the whole of 1896?

A. I was managing Col. Rives's farm, "Castle Hill."

6th Q. Who lived at "Castle Hill" during this period?

A. Col. Rives's family and himself, some of the time; he was in Panama part of the time, building a railroad.

7th Q. Was this the home of Amelie Rives, whom the plaintiff, John Armstrong Chaloner, married?

A. Yes, sir.

8th Q. After the plaintiff's marriage, did he spend much of his time at "Castle Hill"?

A. Yes, sir, most of it.

9th Q. Did you see him frequently?

A. Yes, sir; mighty near every day.

10th Q. How far is the plaintiff's home from "Castle Hill?"

A. About 3 miles.

11th Q. Did you see much of the plaintiff after 1895, when he moved to "The Merry Mills?"

A. Not as often as I did before.

12th Q. Did you see anything of the plaintiff during the year 1896?

A. Yes, sir.

13th Q. Where did you see him?

A. I would meet him on the road; he would ride through the farm where I was managing, "Castle Hill."

14th Q. Did you ever go to his house?

A. Yes, sir.

15th Q. Did you see him frequently after he moved to "The Merry Mills?"

A. No, sir, not as often as I did before he moved.

16th Q. How often did you go to his house in 1896?

A. Not often, I was there several times, and would meet him on the road and going to church.

17th Q. Do you know when he moved to "The Merry Mills?"

A. I could not give the date.

18th Q. When you saw the plaintiff in 1896, how did he act?

(By Mr. Choate: Same objection.)

A. Acted as any other man—in what way do you mean?

18th Q. State how he acted?

A. He acted all right, as any other man should act.

19th Q. When you saw him during 1896, particularly in

the fall and winter of 1896, how did he look and talk and act?

A. Like he always had previous to that time.

20th Q. Did you at any time prior to his going to New York in February, 1897, see anything about his acts, looks or speech to indicate he was insane?

(By Mr. Choate: Same objection.)

A. No, I never did.

21st Q. Did you on any of your visits to the plaintiff's house prior to February, 1897, see a darkey in uniform or otherwise, parading up and down at the plaintiff's house with a rifle, or see anything to indicate that the plaintiff's house was barricaded, or that there was anything unusual about the plaintiff's house at that time?

A. No, sir; I never did.

22nd Q. Did you at any time prior to his going to New York in 1897 hear a rumor about a darkey parading up and down at his house, with a rifle, or that the plaintiff's house was barricaded?

(By Mr. Choate: I object to that as calling for hearsay and as immaterial.)

A. No, sir; I did not.

23rd Q. If there had been any rumors about a darkey parading up and down at the plaintiff's home, or of the plaintiff's house being barricaded, or of there being anything unusual there, would you have heard of it?

(By Mr. Choate: Same objection.)

A. I certainly would, you can't keep anything like that concealed.

24th Q. Where was the plaintiff living at the time he went to New York with Stanford White?

A. He was living at "The Merry Mills."

25th Q. Was he spending all of his time at "The Merry Mills?"

A. I could not say, I left Albemarle County in September, 1896; I did not see him after September, 1896, until he took the train at Barboursville.

26th Q. During the time you knew him, visited him at his house in 1896, was he living at home constantly?

A. Yes, sir.

27th Q. Did he own horses and cattle at that time at his home?

A. Yes, sir.

28th Q. Did he or not have servants in regular attendance at that time?

A. Yes, sir; he had servants attending his house, horses, garden, cows and things of that kind.

29th Q. Was he at that time managing a farm on his estate, "The Merry Mills?"

A. Yes, sir; he owned the farm at "The Merry Mills."

30th Q. Was he farming it himself?

A. He was having the work done himself, I think, as well as I remember.

31st Q. Did you ever have any business dealings with the plaintiff, or discuss matters with him at any time during the year 1896, or prior to that time?

A. Prior to that time I did. I talked with him a good deal.

32nd Q. How did he act?

(By Mr. Choate: I object on the same ground as previously stated.)

A. As a business man should.

33rd Q. Did you ever buy any horses for him prior to February, 1897?

A. Yes, sir; I bought stock for him.

34th Q. Did he or not know anything about the quality and value of stock?

(By Mr. Choate: I object to that as immaterial.

A. Pretty good judge of a horse, looked over every inch of him before he accepted him.

35th Q. When was the last time you saw him before he left Virginia in February, 1897?

A. It was in 1896, about the last of August, some time in August or September, I disremember the day exactly.

36th Q. Did you or not see him the day he left Albemarle County, on February 13, 1897?

A. Yes, sir; I would not have known him if he had not recognized me; he drove by, with some other gentlemen, and he hollered at me, as he always did. I was in my yard and he drove by, and he threw up his hand and hollered, 'Hello, Munday,' and I went on to the station, but before I got there they boarded the train, and I asked who that gentleman was, and they said 'Mr. Chaloner,' and I met the driver, and he said it was Mr. Chaloner.

37th Q. Where was he when he "hollered" at you?

A. He was in the road.

38th Q. Driving?

A. Yes, sir; to the station, about 200 yards from my house.

39th Q. Th at was the time he took the train to New York with Mr. Stanford White?

A. Yes, sir; I think it was on Sunday, as well as I remember.

40th Q. Did he act in the usual way when he saluted you?

A. Just as he always did.

41st Q. What seemed to be his physical condition then?

A. He was going too fast for me to form any opinion.

42nd Q. Mr. Munday, did the acts of the plaintiff, John Armstrong Chaloner, which you have described here in your testimony, impress you that Mr. Chaloner was rational or irrational?

(By Mr. Choate: Same objection.)

A. Rational.

43rd Q. Did you have any opinion other than that he was always rational?

(By Mr. Choate: Same objection.)

A. I had no right to form any opinion, unless he gave me some cause.

44th Q. He never gave you any cause to form any other opinion?

A. He never gave me any cause.

45th Q. At any time did you ever observe any act or any speech which you would characterize in your opinion as irrational?

(By Mr. Choate: Same objection.)

A. No, sir; he was shrewd and correct up to a penny in every business dealing I had with him.

46th Q. When did you see the plaintiff after he returned to Virginia in 1901?

A. I think it was in the early fall.

47th Q. Was this prior to the proceedings had here in Albemarle County?

A. I don't remember, I was here though, and I think it was.

CROSS-EXAMINATION.

1st Q. By Counsel for Defendant: Mr. Munday, what was the character of the business that you had with the plaintiff in 1896?

A. I did not have any business transactions with him after '93 and '94.

2nd Q. What business transactions did you have with him?

A. I bought a horse and buggy for him, and I have gone to the bank and gotten money for him, and bought ma-

chinery for him, anything that he wanted me to do in that way.

3rd Q. What took you to his house in 1896?

A. I did not go there very often in 1896.

4th Q. What took you there when you did go?

A. I would just ride there and see him.

5th Q. How many times, all told, did you go to his house, do you suppose, after he removed to "The Merry Mills?"

A. I could not tell you.

6th Q. As many as 6 times?

A. I reckon so.

7th Q. More?

A. I reckon not, I never kept any account.

8th Q. On these occasions when you went to the house you never went in the house?

A. Not every time.

9th Q. Have you ever had any experience with people of unsound mind?

A. No, sir; I have seen some, but never had any dealings with them.

10th Q. You said that you had not really formed an opinion as to the plaintiff's state of mind, was that because you did not feel that you had seen enough of him to form an opinion?

A. Yes, sir; I have seen him often enough to form an opinion of him, as well as of any of my friends that I have been raised with.

11th Q. You have always been a friend of his?

A. Only in a business way, I was never intimate with him.

12th Q. You were fond of him—he was kind to you?

A. He was always very kind and considerate, as any gentleman would be, he was always kind to every one.

RE-DIRECT EXAMINATION.

1st Q. By Counsel for Plaintiff: When you stated that in your opinion the plaintiff, John Armstrong Chaloner, was

a rational man, did you form that opinion by reason of the knowledge you had of him during a number of years at "Castle Hill"?

(By Mr. Choate: Same objection.)

A. Yes, sir; in my dealing with him I formed my opinion of him; I had no right to form any opinion of him except that he was all right.

2nd Q. You based that opinion on all your intercourse and dealings with him?

A. Yes, sir.

3rd Q. And also on the years he lived at "Castle Hill"?

A. Yes, sir.

4th Q. And he did live there for some time?

A. Yes, sir.

5th Q. How long did you live there?

A. 15 years.

6th Q. Were you there at the time of his marriage to Miss Amelie Rives?

A. Yes, sir.

7th Q. And were you there during all the period of their married life when they were at "Castle Hill"?

A. Yes, sir.

8th Q. You said you have seen people of unsound mind?

A. I have.

9th Q. When you saw people of unsound mind did you have an opportunity to observe their actions?

A. Yes, sir.

10th Q. Did you observe them?

A. I have on one or two occasions; I have seen people taking them on to the Staunton Insane Asylum.

11th Q. In forming your opinion as to whether the plaintiff was rational or irrational, did you have in mind your experience and observations you have made when you have seen people of unsound mind?

A. Yes, sir.

12th Q. You said you have gone to the bank and gotten money for him; in what bank did he have money?

A. In the Albemarle Bank; I rode there one morning, and got it for him; there was a deep snow, he was fixing to go away and wanted the money.

13th Q. During what years did the plaintiff have that bank account of your own knowledge?

A. It was in 1894, I think sir; I don't know, I never take any note of dates.

14th Q. To the best of your recollection he had a bank account in Albemarle Bank in 1894?

A. I think so, I would not be positive as to the date.

15th Q. Did you draw money for him?

A. Only on one occasion, when it did not suit him to go.

16th Q. Did he give you a check?

A. He gave me an order.

17th Q. He gave you a draft?

A. Yes, sir.

18th Q. That check did not close the account?

A. Oh, no, sir; I don't think it did.

RE-CROSS EXAMINATION.

1st Q. By Counsel for Defendant: Did you ever exchange one word with these people of unsound mind that you have seen?

A. Yes, sir; but I never felt like talking with people of that kind.

2nd Q. You did speak to them?

A. Yes, sir; I said "How-do-you-do?" or something of that kind.

3rd Q. Tell us one instance when you did speak to a person of unsound mind?

A. It was a girl they were taking to the Asylum, years ago, when I was not grown; I merely spoke to her and asked her where she was going.

4th Q. Did she speak to you?

A. Yes, sir; she spoke.

5th Q. How many years ago?

A. Thirty years, I suppose.

6th Q. That is the only case in which you ever exchanged words with a person of unsound mind?

A. That is the only time I ever spoke to them, I have seen enough of them; I had no occasion to converse with them.

7th Q. The other times you have seen them at a distance?

A. Yes, sir; and close to them; have helped to put them on the train.

RE-DIRECT EXAMINATION.

1st Q. By Counsel for Plaintiff: You say you have helped to put them on the train?

A. Yes, sir.

2nd Q. Did you hear the alleged insane people say anything when you helped to put them on the train.

A. Yes, sir; they were always saying some fool talk or other.

3rd Q. Have you put insane people on the train within the period of thirty years?

A. Oh, yes, helped to do it.

4th Q. On those occasions did you closely observe the actions and facial expressions and words of the alleged insane person?

A. Yes, sir; I certainly did, more out of curiosity than anything else; a crowd would gather around when they would bring them in.

5th Q. You have stated that you have made these observations of insane persons, in your opinion did any of the acts of the plaintiff, John Armstrong Chaloner, impress you as being that of on irrational man?

(By Mr. Choate: Same objection; also on the ground that it is a repetition.)

A. No, sir.

6th Q. How did the acts of the plaintiff impress you?

A. As a rational man and a business man.

And further this deponent saith not.

PLAINTIFF A GOOD BUSINESS MAN.

Testimony William C. Webb, 69-74.

WILLIAM C. WEBB, being first cautioned and duly sworn to testify the whole truth, deposes and testifies as follows:

1st Q. By Counsel for Plaintiff: Please give your name and age?

A. William C. Webb, 71.

2nd Q. Where do you live?

A. I live in Albemarle County, in the suburbs of Charlottesville you might say, but it is out in the county.

3rd Q. What is your business?

A. I am a mechanic, harness-maker.

4th Q. What was your business in 1896?

A. The same, sir.

5th Q. How long have you known the plaintiff, John Armstrong Chaloner?

A. I could not say positively, I have know him a good long while, since shortly after he was married; I could not exactly give the day or year.

6th Q. Did you know him well prior to 1897, when he was taken to "Bloomingdale" Asylum?

A. Yes, sir; I knew him prior to that.

7th Q. Did you see anything of him during the year 1896, the year previous to his going to New York?

A. Yes, sir.

8th Q. Did you ever have any business dealings with him?

A. Yes, sir.

9th Q. Did you have any business dealings with him during the year 1896?

A. I think I did.

10th Q. What business dealings did you have with him?

A. Selling merchandise in my line of business—some goods made to order for him.

11th Q. Specifically what did you sell him?

A. Some hunting martingales on one occasion; some bridles and other things; I can't remember things like that.

12th Q. Did you ever order or make any harness especially for him?

A. Never made any harness for him; made those hunting martingales for him. Whenever he wanted any little article we did not have in stock he would come in and have it made.

13th Q. Did you ever sell the plaintiff a saddle outfit?

A. I think I have, sir.

14th Q. Did you ever make a set of saddle bags for him?

A. Yes, sir.

15th Q. Do you know what kind of saddle bags he wanted?

A. He came up and gave his description and directions for them.

16th Q. Was he careful as to the kind of bags he wanted?

A. Yes, sir; he brought the papers along to show what he wanted to carry in them, and I made them according to his instructions.

17th Q. What do you mean by papers?

A. It was legal head paper, I think.

18th Q. He indicated the size of bag he wanted?

A. He showed me the size of the bag he wanted and told me the kind of paper he wanted to carry in it.

19th Q. How did he act in dealing with you in 1896?

(By Mr. Choate: Same objection.)

A. Like any other business man would; was as clear as anybody I ever dealt with; I never saw anything wrong with

20th Q. In your dealings with him, did you ever see anything in his acts, looks or speech to indicate that he was insane?

(By Mr. Choate: Same objection.)

A. I did not.

21st Q. From the dealings which you had with the plaintiff, Mr. John Armstrong Chaloner, and by reason of the intercourse that you had with him on the occasions that you saw him did you form an opinion as to whether he was rational or irrational?

(By Mr. Choate: Same objection.)

A. I did not, I never thought of such a thing.

22nd Q. There was never such a question raised in your mind, is that the idea?

(By Mr. Choate: I object to that as leading.)

A. No, sir.

23rd Q. In your opinion, from the acts which you have described, were you impressed with the opinion that he was rational or irrational?

(By Mr. Choate: Same objection.)

A. I took him to be a rational man, and dealt with him accordingly.

24th Q. In these transactions which you had with the plaintiff, John Armstrong Chaloner, did you extend credit to him?

A. Yes, sir.

25th Q. Have you ever seen any act or anything which would indicate to you in your opinion that the plaintiff, John Armstrong Chaloner, was not a sane, competent and rational man?

(By Mr. Choate: I object to that as calling for a conclusion and the opinion of the witness on an immaterial matter.)

A. I never saw anything wrong with him in my dealings with him.

CROSS EXAMINATION.

1st Q. By Counsel for Defendant: How often do you suppose that you have seen the plaintiff?

A. That is impossible to answer; I saw him sometimes twice a month; sometimes I would not see him for a month or six weeks. He was a customer of mine and dealt with me and whenever he wanted anything he came in and got it.

2nd Q. Otherwise you did not see him?

A. I have seen him other places.

3rd Q. Was he one of your best customers?

A. Yes, sir; he was a good customer.

4th Q. You have always had a friendly feeling for him?

A. Yes, sir; most assuredly, as I do everybody.

5th Q. That is why you are here?

A. No, sir; I don't understand that question; I am summoned here; not here as a personal favor.

6th Q. You are here under subpoena?

A. Yes, sir.

Note: At this point the witness left the stand, but returned and asked to make a statement.

Q. Do you care to make any change in the testimony which you have given?

A. I wish to say that I made a mistake in saying that I was summoned here, and that instead of being summoned I am here just as the rest of the witnesses, being requested.

Q. That is being requested by the plaintiff?

A. Yes, sir.

RE-DIRECT EXAMINATION.

1st Q. By Counsel for Plaintiff: Did you testify in the proceedings in Albemarle County, Va., in 1901, upon an inquiry into the sanity of John Armstrong Chaloner?

A. Yes, sir.

2nd Q. Was the evidence that you gave in that proceeding for any cause in any way or in any degree biased?

(By Mr. Choate: Objected to as calling for the conclusion of the witness as to his own testimony.)

A. No, sir.

And further this deponent saith not.

PLAINTIFF CAREFUL BUSINESS MAN.

Testimony C. R. Garner, 75-83.

C. R. GARNER, being first cautioned and duly sworn to testify the whole truth, deposes and testifies as follows:

1st Q. By Counsel for Plaintiff: Please give your name and age?

A. Charles R. Garner, 52.

2nd Q. Where do you reside?

A. City of Charlottesville, Va.

3rd Q. Where were you living in 1896?

A. Charlottesville.

4th Q. Did you know the plaintiff before 1896?

A. Yes, sir; I was acquainted with him in 1894.

5th Q. Did you ever have any business dealings with the plaintiff prior to 1897?

A. Yes, sir; when he bought "The Merry Mills" and remodelled it.

6th Q. When did he buy "The Merry Mills?"

A. I don't know; I contracted for repairing it ,repainting it and repapering the walls, in April, 1894, commencing work in 1894.

7th Q. He owned the place in April, 1894?

A. Yes, sir; I suppose so, it was in April I contracted for the work, and I commenced the work in May.

8th Q. How often were you there in 1894?

A. Off and on until the 1st of December.

9th Q. What work did you do at the plaintiff's house in 1894?

A. I remodelled the whole inside with paint and varnish, painted it all outside and the roof; did a lot of kalsomining also, inside and out.

10th Q. During the same time were any other repairs made to the house other than those you did?

A. Yes, sir; a lot of carpenter's work and brick work; plumbing and heating apparatus put through the building.

11th Q. Were any of the outhouses repaired?

A. All on the place remodelled and a swimming-pool made.

12 Q. Was the house fitted up as a summer residence or as a residence for the year round?

A. I suppose it was to be his permanent residence; he told me to be particular with Mrs. Chanler's room, the west room the front; to make a nice job of it.

13th Q. Have you done any work at his house since 1894?

A. Yes, sir; off an on up to September, 1896. I worked there every year off and on; every year there was something to be done there.

14th Q. Did you see anything of the plaintiff in 1896?

A. Yes, sir; he was there the whole time I was there; I think I was there a portion of two days and one night, could not get through.

15th Q. How did the plaintiff act during these few days that you spent there in 1896?

(By Mr. Choate:—I object to that as calling for the opinion of the witness upon an immaterial matter.

A. Well, he was laughing and joking as he always did, and he said something about the "cage" I said, "What are you going to do about the cage; you have no bird for the cage?" He said, "Well, I will live here the balance of my days."

16th Q. He stated in the fall of 1896 to you while you were at his home, "The Merry Mills," Albemarle County, Va., that he expected to make that his home the balance of his life?

A. Yes, sir; it was either September, or October, or November, one of those months; it was getting along late in the year; he had fire in the furnace.

17th Q. In a business way, how did he impress you at that time?

(By Mr. Choate: Same objection.)

A. As a rational man.

18th Q. Did he seem to know what he wanted done?

A. Yes, sir; perfectly; if you left a nail head or anything of that kind even unfinished, he would call your attention to it.

19th Q. Did he seem to be very careful in all the work you have done for him?

A. Very careful.

20th Q. Did he pay you for the work at the time you did it for him in 1896?

A. Yes, sir; I never made a note of it. The other work I did for him when he was not at home was on the books and a bill made for it and he would send me a check; that time he settled for it himself; I think it was for a lot of glazing and touching up the porches and white work.

21st Q. Did you on the occasion of your visit at his house in 1896, see anything about his acts, looks or speech to indicate that he was insane?

(By Mr. Choate: Same objection.)

A. No, sir; nothing in the world, it never crossed my mind about his being an insane man.

22nd Q. Was his house at that time barricaded or was there anything unusual about the premises?

A. No, sir; no more than any other dwelling, except he had storm blinds on the outside that he locked it up in the winter when he was not there.

23rd Q. Did you see the plaintiff after he returned to Virginia before the 1901 proceedings?

A. Yes, sir; I met him on the street several times; the first time I saw him was in Charlottesville. He called at my house one morning and I was not there. Mrs. Garner was there, and he told her he would be back about 3 o'clock. I met him there at that time and had about an hour's conversation with him. In fact, I have seen him at my house several times.

24th Q. How did he look when he returned in 1901?

(By Mr. Choate: Same objection.)

A. He looked like he always did, except he had lost his moustache, acted in the same manner.

25th Q. Are you the same Mr. C. R. Garner who testified in the 1901 proceedings in Albemarle County, Va.?

A. Yes, sir.

26th Q. Was the evidence that you gave in that proceeding for any cause in any way or in any degree biased?

A. No, sir; not a bit in the world.

27th Q. Did his conduct and acts which you have described, which took place at his home in 1896, impress you as being rational or irrational?

(By Mr. Choate: Same objection.)

A. Rational, of course; I had no idea but that he was a rational man, from his conversation and conduct and everything.

28th Q. Did his acts which you have described upon his

A. No, sir; because I did not think he showed any signs of insanity.

8th Q. Were those experiences prior to 1896?

A. Yes, sir.

9th Q. When were the experiences that you had with the lady that you helped to take to Staunton?

A. I could not recall the year; the lady was Mrs. Hotopp.

10th Q. Was that a short time prior to the time you saw Mr. Chaloner in 1896?

A. It was some time prior to that, I could not tell exactly how long.

11th Q. Have you ever seen any act of Mr. John Armstrong Chaloner which, in your opinion, you would characterize as the act of an irrational person?

(By Mr. Choate: Same objection.)

A. No, sir.

RE-CROSS EXAMINATION.

1st Q. By Counsel for Defendant: Mr. Garner, you realize that there are many persons of unsound mind that are not at all violent?

(By Mr. Reed: I object to that as calling for the conclusion of the witness.

A. Oh, yes.

And further this deponent saith not.

(At this point the hearing of these depositions was adjourned until to-morrow morning, Thursday, October 15, 1908, at 10 o'clock.)

(The hearing of these depositions was resumed this morning, Thursday, October 15, 1908, at 10 o'clock.)

PLAINTIFF SANE AND COMPETENT BEFORE AND DURING FEBRUARY, 1897.

Testimony William Johnson, 84-96.

WILLIAM W. JOHNSON, being first cautioned and duly sworn to testify to the whole truth, deposes and testifies as follows:

1st Q. By Counsel for Plaintiff: Please give your name and age.

A. W. W. Johnson, 65 years old.

2nd Q. What is your occupation?

A. Mechanic, wheelwright and carpenter.

3rd Q. Where is your place of business and residence?

A. Cismont, Albemarle County, Va.

4th Q. Do you own the house you live in?

A. Yes, sir.

5th Q. Did you know the plaintiff well and see him frequently prior to February, 1897, when he went to New York?

A. I knew him well, but did not see him quite so often.

6th Q. Did you see anything of him during the year, 1896, the year prior to his going to New York?

A. Yes, sir.

7th Q. Did you during this year go to his home?

A. Yes, sir.

8th Q. What time during 1896 did you go to his home?

A. I could not exactly mention the date.

9th Q. When was the last time?

A. During the summer of 1896, I could not exactly give the date.

10th Q. Did you see him recently before he went to New York in February, 1897?

A. I saw him between January and the time he left.

11th Q. You saw him between January, 1897, and February, 1897, when he went to New York?

A. Yes, sir, between the 1st of January and the 1st of February.

12th Q. Between the first of January and the time he left for New York?

A. Yes, sir.

13th Q. Did you in 1896 or 1897 have any business dealings with the plaintiff?

A. Not in 1897, but in 1896.

14th Q. Do you know him personally?

A. Yes, sir.

15th Q. The last time you saw him before he went to New York in February, 1897, how did the plaintiff look?

(By Mr. Choate: I object to the question as incompetent, immaterial and calling for a conclusion.)

A. Rational.

16th Q. Did you do any work at the plaintiff's house just prior to his going to New York in 1897?

A. I did a good lot of it.

17th Q. Did you do any work at his house very recently before he left for New York in 1897?

A. Yes, sir.

18th Q. What work did you do?

A. I went there to fix an elevator, dumb waiter, that was the early part of the year.

19th Q. What year was that?

A. 1897.

20th Q. In the early part of 1897, before he went to New York and was put in "Bloomingdale" Asylum, you did some work at his house, fixed a dumb waiter?

A. Yes, sir.

21st Q. Was the plaintiff at home on that occasion?

A. Yes, sir, in the dining-room.

22nd Q. How long were you there?

A. 15 or 20 minutes.

23rd Q. How did he look on that occasion?

(By Mr. Choate: Same objection.)

A. Just as any other man to me; I saw nothing unusual about hi sacts and looks; seemed to be attending to the inner man about that time, eating his breakfast or dinner, I don't remember which.

24th Q. How did he act at that time?

(By Mr. Choate: Same objection.)

A. Rational.

25th Q. Did you have any conversation with him?

A. No, sir, only spoke to him.

26th Q. Did the acts of John Armstrong Chaloner on this occasion which you have described impress you as being rational or irrational?

(By Mr. Choate: Same objection.)

A. Rational, as far as I could see. I was not noticing him particularly; but he was as rational as any man I know.

27th Q. Did you on that occasion, or at any time before he went to New York in February, 1897, see anything about his acts, looks or speech to indicate that he was dangerous?

(By Mr. Choate: Same objection.)

A. Nothing at all.

28th Q. Did you at this time, or at any time prior to his going to New York in 1897, see anything about his acts, looks or speech to indicate that he was irrational?

A. Nothing at all.

29th Q. Were you kept out of Mr. Chaloner's house on this occasion in any manner?

(By Mr. Choate: Objected to as leading.)

A. No, sir.

30th Q. Did you see any barricade at the house when you went there on this occasion?

(By Mr. Choate: Objected to as leading.)

A. No, sir.

31st Q. Did you on this visit, or on any visit to the plaintiff's house prior to February, 1897, see a darkey in uniform or otherwise, parading up and down at the plaintiff's house, with a rifle?

(By Mr. Choate: Objected to as leading, and also as immaterial.)

32nd Q. Did you on this last visit to the plaintiff's house, or any visit to his house, see anything to indicate that the plaintiff's house was barricaded, or anything unusual about the place?

(By Mr. Choate: Objected to as leading and calling for a conclusion, also as immaterial.)

A. No, sir.

33rd Q. What acts, if any, of the plaintiff at that time led you to believe that he was either dangerous or insane?

(By Mr. Choate: I object to that as incompetent, immaterial and calling for a conclusion.)

A. None at all.

34th Q. By saying none at all, do you mean that you saw nothing to indicate that he was either dangerous or insane?

(By Mr. Choate: Same objection.)

A. No, sir, I saw nothing of the kind.

35th Q. Did you ever hear of a darkey parading up and down at the plaintiff's house, with a rifle, or of the plaintiff's house being barricaded, or anything unusual about the premises?

(By Mr. Choate: Same objection.)

A. No, sir, I saw nothing of that kind.

36th Q. Were you constantly at home prior to February, 97, when the plaintiff went to New York?

A. Yes, sir.

37th Q. How did the plaintiff act and talk when you t saw him before he went to New York in 1897?

(By Mr. Choate: Same objection; also as incompetent. material and calling for the opinion of the witness.)

A. Rational.

38th Q. In your business dealings and conversation with did he in 1896 act as he always had done prior to that me?

(By Mr. Choate: Same objection.)

A. Yes, sir.

39th Q. Where was the plaintiff living in February, 97, when he went to New York?

A. "The Merry Mills," Albemarle County, Va.

40th Q. Was the plaintiff then farming his place at "The erry Mills"?

A. Yes, sir.

41st Q. Was the plaintiff then spending all of his time "The Merry Mills"?

A. I thought so.

42nd Q. Did you in 1896 have any conversation with the laintiff?

A. Only in a business way.

43rd Q. How did he talk in 1896?

(By Mr. Choate: Same objection.)

A. Rational.

44th Q. How did he impress you as a business man 1896?

(By Mr. Choate: Same objection.)

A. Very forcibly.

PLAINTIFF A MASON.

45th Q. Are you a member of a Masonic lodge?

(By Mr. Choate: I object to that as immaterial.)

A. Yes, sir.

46th Q. What lodge?

(By Mr. Choate: Same objection.)

A. No. 60, Widows' Sons' Lodge.

47th Q. Is the plaintiff a member of this lodge?

(By Mr. Choate: Same objection.)

A. He is.

48th Q. Do you know how long he has been a mem of this lodge?

A. Since last December or January, I think; I could remember the date; last year it was.

49th Q. How do you happen to know about how long has been a member of the lodge?

(By Mr. Choate: Same objection.)

A. I came with him to the lodge.

50th Q. The night he was initiated?

A. Yes, sir.

51st Q. What is the full name of what you just cal the Masonic Lodge, of which the plaintiff is a member?

A. Widows' Sons' Lodge, No. 60, Charlottesville, Albemarle County, Va.

52nd Q. What is the official name of the word Mason, is Masons a full name, or is that just a part of the name, re the full name?

A. A. F. and A. M.

53rd Q. What does that stand for?

A. Ancient Free and Accepted Masons.

54th Q. How many members are there of this lodge you re just spoken of?

(By Mr. Choate: Objected to as immaterial.)

A. 150 I think, the last I heard there was 130.

55th Q. Did you see the plaintiff upon his return to Virginia, prior to the proceedings had here in Albemarle County 1901?

A. Yes, sir.

56th Q. How did he look on this occasion?

(By Mr. Choate: I object to that as incompetent, immaterial and calling for a conclusion.)

A. As usual, natural.

57th Q. How did he act.

(By Mr. Choate: Same objection.)

A. Natural.

58th Q. Did you form any opinion from what you observed of his acts and his looks as to whether or not the plaintiff in 1901 was rational or irrational?

A. Yes, sir.

59th Q. Kindly state to the court from the acts and appearance of the plaintiff, John Armstrong Chaloner, what opinion you formed from your observation?

(By Mr. Choate: Same objection.)

A. Perfectly rational as far as I could see, as much so any other man I knew; I formed a good opinion of him any other man.

60th Q. Describe the opinion you formed?

A. That he was a natural man, nothing the matter wi him.

61st Q. Rational or irrational?

(By Mr. Choate: Same objection.)

A. Rational.

62nd Q. Do you know anything further which would to the benefit of the plaintiff in this action with reference his conduct, appearance and speech which you desire to sta

(By Mr. Choate: Same objection.)

A. I think a man that attends to his own business is perfect man and able to manage his own affairs.

63rd Q. Do you make such an application to the plai tiff?

(By Mr. Choate: Same objection.)

A. Yes, sir.

64th Q. You say that you think a man that attends his own business and lets others alone, is capable of managi his own business, do you connect such qualities to the plai tiff?

A. I say a man who can attend to his own business a let other people's business alone he is a perfect man, and is capable of attending to his own business.

65th Q. Have you found that the plaintiff is such a ma

A. Yes, sir.

66th Q. Do you know anything further to the benefit the plaintiff that you wish to state?

(By Mr. Choate: Same objection.)

PLAINTIFF CHARITABLE TO THE POOR.

A. He is a man that is good to the poor; does not "grease a fat hog." I know a good many instances that he picks out the poor. He don't go and "brush the dust off of his own brother"—he gives to the needy. I think a deranged man would not do that.

67th Q. Is there anything further you wish to say?

(By Mr. Choate: Same objection.)

A. I think a man if he had been deranged, when he got out of "Bloomingdale" Asylum, would be as liable to go toward Massachusetts as he would go home; but he went home, went to Lynchburg and came back and found his old home at last.

68th Q. Do you know what the home of the plaintiff was?

A. At "The Merry Mills," Albemarle County, Va.

69th Q. Are there any facts in reference to your acquaintance with the plaintiff that you desire to state?

A. I know he has a good keen eye. I have been doing work on his buildings and wagon work, and everything else since he was there. Some things may look a little strange to me, but when I ferret them out I find that he is all right. If you don't turn a screw right he will tell you about it in a nice, gentlemanly way; but he don't catch me often.

CROSS-EXAMINATION.

1st Q. By Counsel for Defendant: Your idea of insane people is that they are entirely unable to take care of themselves?

A. I have had something to do with insane people.

2nd Q. Your idea is that they are entirely incapable of taking care of themselves?

A. Yes, sir.

RE-DIRECT EXAMINATION.

1st Q. By Counsel for Plaintiff: State what you h had to do with insane people?

(By Mr. Choate: Objected to as improper re-direct amination.)

A. I took one to the Institution, and I had quite an perience on the same place that Mr. Chaloner lives, with fellow named John Pegram.

2nd Q. Describe what experiences you have had?

A. I don't know that I could describe them in detail.

3rd Q. How many insane people have you had expe ence with?

A. Two.

4thQ. Did you have an opportunity to observe their a and demeanor?

(By Mr. Choate: Objected to as immaterial.)

A. Yes, sir.

5th Q. Did you observe them?

A. Yes, sir.

6th Q. When you said on your direct examination th in your opinion the plaintiff, John Armstrong Chaloner, w perfectly rational, did you have in mind the previous exp riences you had with insane persons?

(By Mr. Choate: Objected to as immaterial.)

A. Yes, sir.

7th Q. Have you observed any acts of this plaintiff, Jo Armstrong Chaloner, which you could characterize in yo opinion as in any way irrational?

(By Mr. Choate: Objected to as incompetent, immat rial and calling for a conclusion.)

A. No, sir; you might send us a few more down here, if you have got them, like him.

And further this deponent saith not.

PLAINTIFF SANE AND NORMAL ON FEBRUARY 13, 1897.

Testimony William Kennie, on Which Day Stanford White Drove From Charlottesville, Va., to "The Merry Mills" and Took Plaintiff Away With Him to New York, 97-107.

WILLIAM KENNIE, being first cautioned and duly sworn to testify the whole truth, deposes and testifies as follows:

1st Q. By Counsel for Plaintiff: Give your name and your age?

A. William Kennie, 53 years old.

2nd Q. What was your occupation in February, 1897?

A. I was a driver for Mr. A. D. Payne.

3rd Q. What business was Mr. A. D. Payne in?

A. Livery business.

4th Q. Where?

A. Here in Charlottesville.

5th Q. How long had you been with Mr. A. D. Payne?

A. I worked for Mr. Payne 26 years, I had been with him some considerable time.

6th Q. Did you know Mr. Stanford White prior to this time?

A. Yes, sir.

7th Q. When and where did you know him?

A. When Mr. White was here as architect for the company, Meade, White & McKim when they were rebuilding the University of Virginia.

8th Q. Prior to this time?

A. Yes, sir.

9thQ. On February 13, 1897, did you drive with Mr.

Stanford White and another gentleman out of Charlotte ville?

A. Yes, sir.

10th Q. Had you driven him on previous occasions?

A. Mr. White?

11th Q. Yes?

A. Yes, sir, I had.

12th Q. Did he know you?

A. I don't know; he usually called for me; when I wa around he wanted me to wait on him.

13th Q. You knew who Mr. White was?

A. Yes, sir.

14th Q. On what time of the day of February 13, 189 did you drive him from Charlottesville?

A. As near as I could remember, about 10 o'clock in th morning.

15th Q. Do you remember the date?

A. I don't remember the date, I did not pay any attentio to the date, but I remember the day.

16th Q. What month in the year was this that you drov him out of town with this other gentleman?

A. In February.

17th Q. What year?

A. 1907.

18th Q. 1907 or 1897?

A. 1897—the University of Virginia burnt in 1895, it wa 1897.

19th Q. Did you know the other gentleman in the vehicl with him?

A. He was a stranger to me.

20th Q. Where did you start from?

A. Started from Mr. Payne's stable.

21st Q. Who came to the stable for the vehicle?

A. Mr. White and this strange gentleman.

22nd Q. From whom did they get the vehicle?

A. Mr. Payne called me to get the vehicle and hitch up and wait on these gentlemen.

23rd Q. One of whom you recognized to be whom?

A. Mr. White, and he and this strange gentleman got in the carriage.

24th. Where did they tell you they wanted to go?

A. Near Coham.

25th Q. Did they tell you where they were going, any more particularly than Cobham?

A. No, sir.

26th Q. What did you do?

A. I got in the road, I knew the way to Cobham and I kept going.

27th Q. What took place—did you go to Cobham?

A. No, sir, I did not go quite to Cobham.

28th Q. When was the first time you knew where you were going?

A. When I got to the gate.

29th Q. Whose gate?

A. Mr. Chaloner's gate.

30th Q. What took place then?

A. They hold me to turn in the place.

31st Q. Who told you?

A. Mr. White.

32nd Q. Whose home was that?

A. Mr. Chaloner's.

33rd Q. About what time did you reach Mr. Chaloner's?

A. About 12 o'clock, the roads were mighty bad.

34th Q. What did you see around the building?

A. I did not see a thing in the world, a colored man told me to drive around the back way and put up my horses.

35th Q. Did you see anything unusual about the place?

A. Not a thing in the world.

36th Q. Was there anything unusual about the way you were met?

A. Not a thing.

37th Q. Did these gentlemen go in the house?

A. Yes, sir.

38th Q. Where did you go?

A. I stayed around with the colored men, with the colored man who was staying in the back part. I put up my horses and fed them.

39th Q. How long did you stay there?

A. Until nearly 4 o'clock in the afternoon.

40th Q. While there whom did you see?

A. I saw the cook and the man that was staying there, and I think there was another colored girl waiting in the house. They were busy getting dinner ready.

41st Q. Where did you get dinner there?

A. I got dinner there in the yard.

42nd Q. Did you see anything of Mr. Chaloner's stable man?

A. His colored man?

43rd Q. Yes?

A. Yes, sir, and he and I talked together all the time.

44th Q. What was he doing?

A. Cleaning up Mr. Chaloner's riding things; said Mr. Chaloner often went out riding and he liked to keep things nice. I just talked in general with him.

45th Q. Did you hear anything unusual during the day?

A. Not a thing in the world.

46th Q. Did you see anything unusual during the day?

A. Not a thing, sir.

47th Q. Was there anything suspicious about the premises?

A. Not a thing in the world; everything was just like any other country home. I could see nothing unusual.

48th Q. Did you have a conversation with the cook, too?

A. No, I had no conversation with her. I don't remember any.

49th Q. You say you stayed there about four hours, then what did you do?

A. Sat by the fire, walked around the yard, looked around the place; like to see county places.

50th Q. When did you leave there?

A. Left there about 4 o'clock.

51st Q. Whom did you carry with you when you left?

A. Mr. Chaloner came out and got in the carriage and Mr. White and this other gentleman who was with Mr. White.

52nd Q. What did they get in?

A. In the carriage I was driving.

53rd Q. How did Mr. Chaloner look when he got in the carriage?

(By Mr. Choate: Objected to as incompetent, immaterial and calling for a conclusion.)

A. Looked like any other man.

54th Q. Did you know Mr. Chaloner before that time?

A. Oh, yes, sir.

55th Q. How long had you been knowing him?

A. For a good many years; I know he used to come in town very often.

56th Q. Do you recognize the gentleman now in court as being the same one you knew then?

A. Yes, sir.

57th Q. Did he look and act on that occasion as you had always seen him do?

(By Mr. Choate: Same objection.)

A. Yes, sir.

58th Q. What did you do after they got in your vehicle; what orders did you have then?

A. I had orders to drive to Barboursville.

59th Q. How far is that from Mr. Chaloner's?

A. I don't know, sir, I never went there before; it was a right smart drive.

60th Q. About what distance?

A. Not less than 12 miles, I am sure.

61stQ. During this drive in going down in this carriage did these gentlemen in the carriage talk naturally?

(By Mr. Choate: Same objecton.)

A. Yes, sir.

62nd Q. Did Mr. Chaloner take part in that conversatio naturally?

A. Yes, sir.

63rd Q. How did he act while in the vehicle going down

(By Mr. Choate: Same objection.)

A. Acted like anybody else; talked like gentlemen ge erally do; everybody seemed to be in conversation like ge tlemen generally do.

64th Q. Did you see anything about his acts that mad you think there was anything unusual?

(By Mr. Choate: Same objecton.)

A. Not a thing.

65th Q. Did he ride all the way in your carrage?

A. No, sir.

66th Q. Did he get out of your carriage?

A. Yes, sir.

67th Q. Were there any reasons assigned for his gettin out of the carriage?

(By Mr. Choate: Objected to as hearsay.)

A. Yes, sir, he gave the reason himself.

68th Q. What was his reason?

A. The roads were very bad, and he said he was afraid i we did not drive faster we would not get to the station i time for the train; so he proposed that he and one of th other gentlemen would get out and get in his buggy whic his servant was driving behind; that he could drive his mar faster, and his servant could get in the carriage with me, an that we could still come on. So he did this.

70th Q. Who got out of your carriage?

A. Mr. Chaloner and one of the other gentlemen, and Mr. Chaloner's driver got with me.

71st Q. Who was driving Mr. Chaloner's team after he got out of your carriage?

A. Mr. Chaloner himself.

72nd Q. How did he drive—was he driving a little ahead of you?

A. A little ahead of me; he started out pretty fast and I thought at one time I was not going to keep up with him; he was driving right along.

73rd Q. You got there in time for the train?

A. Yes, sir.

74thQ. What train was that?

A. Train on the Southern Road.

75th Q. Going which way?

A. Going North.

76th Q. Did Mr. Chaloner and these other two gentlemen get on the train?

A. Yes, sir, all got on the train.

77th Q. How did Mr. Chaloner act after he got in the station?

(By Mr. Choate: Same objection.)

A. Walked up and down talking, just like any other gentleman, did not have but a few minutes anyway.

78th Q. State what Mr. Chaloner did after he got to the station?

A. He got to the station a little ahead of me; his man jumped out and took charge of the horse.

79th Q. Then what did Mr. Chaloner do?

A. Walked up and down the little platform, like they have in country stations.

80th Q. Was he talking?

A. Yes, sir.

81st Q. Talking in a friendly, usual way?

A. I did not pay much attention to that; I was a long ways from home and thinking about getting home.

82nd Q. Mr. Kennie, from the acts that you have d
scribed on that occasion in February, 1897, from what yo
observed did you form any opinion at that time, or did yo
in your own mind have any opinion as to whether Mr. Cha
oner was a rational, or irrational, man?

A. Yes, sir, I had a nopinion.

83rd Q. Now, Mr. Kennie, did acts which you have d
scribed of Mr. Chaloner on this occasion in February, 189
impress you as the acts of a rational or an irrational man?

(By Mr. Choate: Same objection.)

A. He impressed me as a rational man.

CROSS-EXAMINATION.

1st Q. By Counsel for Defendant: As I understand yo
have had no acquaintance with Mr. Chaloner except for o
casions when you have driven him about?

A. I never drove Mr. Chaloner about, except when
drove him down there.

2nd Q. Otherwise, you have only seen him passing in th
street?

A. Have seen him putting up his horse at Mr. Payne
stable.

3rd Q. That is the only way you have known him?

A. That is the only way I have known him.

And further this deponent saith not.

TESTIMONY OF WILLIAM KENNIE CONFIRME
BY A. D. PAYNE, 168-113.

A. D. PAYNE, being first cautioned and duly sworn t
testify the whole truth, deposes and testifies as follows:

1st Q. By Counsel for Plaintiff: Please give your nam
and age.

A. Alphonso D. Payne.

2nd Q. What is your business?

A. I am now in the livery business and stock business I own a stock farm, and am running in addition to that a livery business in Charlottesville.

3rd Q. Do you own your business?

A. Yes, sir.

4th Q. Are you a real estate holder?

A. Yes, sir, I own the farm and my livery stable.

5th Q. Do you fill any office in the city government of Charlottesville?

A. I have been a member of the City Council for some years.

6th Q. How many years?

A. I think 17 years, something like that, not less than that.

7th Q. Did you know Mr. Stanford White prior to February, 1897?

A. Yes, sir, I knew him in a business way at my place of business.

8th Q. Was he accustomed to hiring teams from you?

A. Yes, sir, he was a customer at my place of business.

9th Q. You were then running the same livery business that you are running now in Charlottesville, Va.

A. Yes, sir.

10th Q. Have you recently searched your books to find a record of an entry at some time in February, 1897?

Note.—It is here conceded that Mr. Payne's book shows an entry as of Feby. 13, 1897, that Mr. Stanford White got a carriage from Mr. Payne, which was never paid for, and the entry shows that it was the same carriage that was driven to Mr. Chaloner's House, and a note is made there to ask Mr. Money, Mr. Chaloner's agent, for the proper person to pay for the carriage.

Q. By Mr. Choate: Are those the facts, Mr. Payne?

A. Yes, sir.

11th Q. By Counsel for Plaintiff: Was that the same carriage that William Kennie has just testified that he drove to Mr. Chaloner's on Feby. 13, 1897, in which he carried Mr. Stanford White and another gentleman?

A. That is the same item of charge.

12th Q. Do you know from whom he got this carriage on that day?

A. I could not say positively whether he hired it from me or William.

13th Q. It came from your stables?

A. Yes, sir, it was gotten from my stables and used by him.

14th Q. Did you know the plaintiff in this case before February, 1897?

A. Yes, sir, he was at my stable prior to that date for several years, off and on, just putting up his horse there, and sometimes I sent him down to his home from here.

15th Q. Did you then know where the plaintiff lived?

A. I knew that he lived just below Bowl's shop, or Cismont.

16th Q. Prior to February, 1897, when Mr. Stanford White drove your team down to Mr. Chaloner's home, did Mr. Stanford White or Mr. Winthrop Astor Chanler, or anyone else, call upon you to get you to direct them to the plaintiff's hme?

(By Mr. Choate: I object to that as leading.)

A. No, sir, they did not ask for any information at all that I remember.

17th Q. Was any information ever asked you by anyone on this occasion or at any time as to how to get to the plaintiff's home?

A. No, sir.

18th Q. Did any one at this time, February 13, 1897, or at any time prior thereto, call to see you or communicate with you concerning the plaintiff's mental or physical condition?

(By Mr. Choate: I object to that as incompetent and immaterial, and also as leading.)

A. No, sir; not to my recollection.

19th Q. At that time, namely, February 13, 1897, did Mr. Stanford White know you personally?

(By Mr. Choate: Objected to as immaterial and as leading.)

A. Yes, sir, he did; he had a business acquaintance with me there at the stable.

20th Q. And did you at this time know Mr. Stanford White personally?

A. Yes, sir; I knew him prior to that.

21st Q. Did you, prior to February, 1897, have any business dealings with the plaintiff?

A. Yes, sir.

22nd Q. Was he accustomed to bringing his teams to your stable when he came to Charlottesville?

A. Yes, sir; he stopped with me whenever he came up.

23rd Q. Did you see him in Charlottesville frequently?

A. Yes, not very frequently, but whenever he would come up.

24th Q. Did he frequently ride on horseback to Charlottesville and leave his horse at your stable?

A. Yes, sir; a general customer there.

25th Q. Did he come to your stable in 1896, the year prior to his going to "Bloomingdale Asylum"?

A. Yes, sir; am pretty certain he did.

26th Q. Do you recall when was the last time you saw him before he went to New York on this occasion?

A. No, sir; I cannot.

27th Q. Mr. Payne, when you saw the plaintiff the last time prior to his going to New York in 1897, did you consider him rational or irrational?

'(By Mr. Choate: Same objection; also on the gro
that it calls for a conclusion and is incompetent.)

A. Perfectly rational, as far as I knew.

28th Q. How did he act and talk whenever you saw hi

A. Rational, sir; all right.

29th Q. Did you, at any time prior to his going to N
York in 1897, see anything about his acts, looks or spe
to indicate to you that he was not rational?

(By Mr. Choate: Same objection.)

A. I did not, sir.

30th Q. Did you form any opinion by reason of the
servations that you made of him in 1896 and 1897?

(By Mr. Choate: Same objection.)

A. I had no right to make any observation except t
he was rational, no reason to question it.

31st Q. Did the acts that you have described here
your testimony of the plaintiff, John Armstrong Chalo
impress you as rational or irrational?

(By Mr. Choate: Same objection.)

A. Perfectly rational.

CROSS EXAMINATION.

1st Q. By Counsel for Defendant: Before Febru
1897, did you know Mr. Chaloner in any other way ex
from seeing him coming to your stables?

A. Just in a business way there at the stable.

2nd Q. That is all?

A. Yes, sir; just in a business way.

RE-DIRECT EXAMINATION.

1st Q. By Counsel for Plaintiff: Did you say you have only known the plaintiff in a business way, or business and social?

A. I have known him in a business way.

2nd Q. Did you ever have any conversation with him?

(By Mr. Choate: Objected to as improper re-direct examination.)

A. He would always say a word or two whenever he came into the office, in a sociable way.

And further this deponent saith not.

PLAINTIFF CHARITABLE AND GOOD BUSINESS MAN.

Testimony A. J. Bell, 114-123.

A. J. BELL, being first cautioned and duly sworn to tell the whole truth, deposes and testifies as follows:

1st Q. By Counsel for Plaintiff: Please give your name and age?

A. Ashley J. Bell, 48.

2nd Q. What is your occupation?

A. Merchant.

3rd Q. Where is your place of business and residence?

A. Cobham.

4th Q. Did you own your place of business?

A. Yes, sir.

5th Q. Are you a real estate holder?

A. Yes, sir.

6th Q. Where is your real estate located?

A. At Cobham.

7th Q. What is the plaintiff, John Armstrong Chaloner's postoffice and depot station?

A. Cobham.

8th Q. How far is Cobham from the plaintiff's residence, "The Merry Mills"?

A. Two miles.

9th Q. Did you have your place of business and residence at Cobham in 1896 and 1897?

A. Yes, sir; have resided and been in business there continuously since 1888.

10th Q. How long have you known the plaintiff?

A. Ever since his first visit at Cobham. I have known him since 1888 since he first came to Cobham.

11th Q. Have you known him well?

(By Mr. Choate: Objected to as calling for a conclusion.)

A. Yes, sir.

12th Q. Did you see much of him prior to February, 1897?

A. Yes, sir; saw him very frequently; Cobham was his railroad station, and he always took the train there, and that was his postoffice; very often he came in my store when he came to take the train, or get off the train.

13th Q. Did he deal at your store?

A. Yes, sir; kept a bill at my store.

14th Q. Did you se him during the year 1896?

A. Yes, sir.

15th Q. How often?

A. I can't say the number of times, but I saw him every time he came to the station or returned at the station.

16th Q. Was that frequent or infrequent?

A. Very frequent, and he was in my store a good many times.

17th Q. Do you know him personally, as well as in a business way?

A. Yes, sir.

18th Q. Did you ever go to his house?

A. Yes, sir.

19th Q. Did you go to his house in 1896?

A. Yes, sir; the last time I was at his house was in October, 1896.

20th Q. Please state what you saw and what took place on this occasion?

A. The occasion of my visit there at that time was to see him on a business way. I had a brother-in-law who owned a talc mine, and he was trying to get capital interested in it, and knowing Mr. Chaloner was a man of influence and capital, I went to see him to see if I could not interest him and get others interested with capital in this talc proposition. I went to the door and a servant conducted me to his library, and I found him sitting at his desk writing. He arose and greeted me, and he said he had some important letters to write, and he would write and talk too. After talking awhile I mentioned the talc proposition, told him what I wanted; that I wanted to get him interested in it. He looked at the sample of talc I had, and said, "There is no use in trying to do anything after the election; If Bryan is elected the country is going to the devil." After chatting with him a little longer, very pleasantly, I got on my horse and rode home. That was the last time I was at his house before he went away; I saw him after that at the station though.

21st Q. Did you see anything unusual about the plaintiff on this occasion?

A. Nothing in the world.

22nd Q. Was this the last time you went to his home prior to his going to New York in 1897?

A. Yes, sir.

23rd Q. How did the plaintiff look on this occasion?

(By Mr. Choate: Same objection.)

A. Looked as well as I ever saw him, jovial and in good spirits.

24th Q. How did he talk?

(By Mr. Choate: Same objection.)

A. He talked as rational as any man I ever talked with in my life.

25th Q. Did you ever hear any rumor about his house being barricaded, or of a darkey parading up and down at his home, with a rifle, prior to his going to New York in 1897?

(By Mr. Choate: Objected to as hearsay.)

A. No, sir.

26th Q. Did you ever see anything there to indicate that the house was barricaded, or of any darkey's walking up and down with a rifle?

(By Mr. Choate: Objected to as immaterial.)

A. Never.

27th Q. Were you constantly at home prior to February, 1897?

A. Yes, sir.

28th Q. Were you seeing people from the neighborhood as they came to Cobham daily?

A. Every day.

29th Q. Did you have a conversation with numbers of people from time to time, as they came to and fro at the station?

A. Yes, sir; and it is perfectly natural that a man that runs a country store hears the gossip of the whole country.

30th Q. If there had been any rumor about the house of the plaintiff being barricaded, or of a darkey parading up and down at his house, with a rifle, were you in a position to hear that?

(By Mr. Choate: Objected to as immaterial and calling for a conclusion.

A. Yes, sir; I would have heard that; a thing like that would have been on the tongue of every man, woman and child in the community.

31st Q. Where was the plaintiff's residence at that time?

(By Mr. Choate: Objected to as immaterial and calling for a conclusion.)

A. At "The Merry Mills."

32nd Q. Where was the plaintiff living when he went to New York in February, 1897?

A. At "The Merry Mills."

33rd Q. Can you say whether or not this was the plaintiff's permanent residence?

(By Mr. Choate: Objected to as calling for a conclusion of law, and also calling on the witness to prophecy.)

A. Yes, sir; I would say that was his residence; when a man buys property and fixes it up and lives there, it must be his residence.

34th Q. Did he have his home, "The Merry Mills," fitted up similarly to all other country estates?

A. Yes, sir.

35th Q. Did he have around his home all the comforts and incidentals of the average Virginia home?

A. Yes, sir; rather more than the average Virginian could afford to have.

36th Q. Did you see him recently before he went to New York in February, 1897?

A. I saw him, I know, because I saw him every time he took the train, at Cobham. He would also come to the station to send telegrams and would drop in my store.

37th Q. How did he look the last time you saw him, prior to his going to New York in February, 1897?

(By Mr. Choate: I object to that as incompetent, immaterial and calling for a conclusion.)

A. Looked as well as he always did, and perfectly rational; I saw nothing in the world wrong about him.

38th Q. Did you ever at any time prior to his going to New York in February, 1897, see anything about his acts, looks or speech to indicate that he was irrational?

(By Mr. Choate: Same objection.)

A. Nothing in the world.

39th Q. Did you have any business dealings with him other than in the store, or ever talk other business with him?

A. Nothing, as I told you, except this business matter that I wanted to get him interested in—the talc proposition.

40th Q. On business matters, how did he talk and act?

(By Mr. Choate: Same objection.)

A. Acted as rational as any man I ever saw, and talked with clearness and judgment.

41st Q. Did he show any business knowledge, or not?

(By Mr. Choate: Same objection.)

A. Yes, sir; he certainly did.

42nd Q. Did you have a conversation with the plaintiff in the fall of 1896, as to whether the plaintiff would vote in the presidential election?

A. Mr. Chaloner says I had a conversation with him about that: I believe what he says is correct, but I can't recall that conversation.

43rd Q. To the best of your recollection and belief did you have a conversation with him in 1896 which touched upon the presidential election?

A. Yes, sir; on this occasion when I was at his house before the election, he certainly made this remark in regard to the election and Bryan, which I have stated.

44th Q. Did you have in the fall of 1896, a conversation with the plaintiff upon the general topics of the day?

A. Yes, sir; we talked about a great many things.

45th Q. Did you have any conversation with Mr. Chaloner, to the best of your recollection and belief, in which he stated that he would or would not vote for Bryan?

(By Mr. Choate: Objected to as leading, and also on the ground that the witness has already denied any recollection of the conversation in question.)

A. I certainly understand from what he said that the country would go to the devil if Bryan was elected; that was the impression he made upon me.

46th Q. That was in the year 1896?

A. Yes, sir; October, 1896.

47th Q. Has Mr. Chaloner changed his ideas of Mr. Bryan since then?

A. We have had a good many talks about Mr. Bryan.

48th Q. Did you testify in the proceedings in Albemarle County, Va., in 1901?

A. Yes, sir.

49th Q. Is there anything further you wish to say?

(By Mr. Choate: Objected to as illegal and immaterial.)

A. I could say a great many things: I think Mr. Chaloner is a great man, a public benefactor of our country; has done a great many acts of charity; contributes largely to building churches and chapels; helps a great many poor people. He is a very charitable man.

51st Q. You testify to these acts of charity from your personal knowledge, do you, Mr. Bell?

A. Yes, sir; I know when he was in business at his mills at Roanoke Rapids he got a great many girls from our neighborhood and carried them down to the mills at Roanoke Rapids and gave them employment, and I thought this was a great thing to help these poor girls in that way and give them employment.

52nd Q. When you testified in 1901 proceedings in Alb marle County, did you do so as an unbiased, impartial wi ness?

(By Mr. Choate: Objected to as calling for a concl sion.)

A. Yes, sir, I did; and I am doing the same thing now

53rd Q. Is there anything further you desire to sta as to the plaintiff's acts of charity?

A. I don't know that there is anything further.

54th Q. Have those acts of charity that you speak extended over a period of 15 years?

A. Yes, sir.

55th Q. Were those acts, s ıe of them, prior to his goin to New York in February?

A. Yes, sir.

56th Q. And subsequent to his return?

A. Yes, sir.

CROSS EXAMINATION.

1st Q. By Counsel for Defendant: Mr. Chaloner ha always been a customer of yours, has he not, Mr. Bell?

A. Yes, sir.

2nd Q. And a very good friend?

A. Yes, sir.

3rd Q. And you have a high regard for him?

A. Yes, sir.

And further this deponent saith not.

PLAINTIFF'S SOUND PHYSICAL AND MENTAL CONDI TION.

Testimony Dr. Mann Page, Plaintiff's Family Physician, 124-17

DR. MANN PAGE, being first cautioned and duly swo to tell the whole truth, deposes and testifies as follows:

1st Q. By Counsel for Plaintiff: What is your full name?

A. Mann Page.

2nd Q. What is your profession?

A. Practice of Medicine.

3rd Q. Where is your residence?

A. I am now residing at my mother's home, Cobham, Va.

4th Q. What is your age?

A. 37.

5th Q. When were you admitted to the practice of medicine?

A. Just after I graduated at the University in 1897 I passed the State Board of Virginia and was admitted to the practice of medicine.

6th Q. What University do you refer to?

A. University of Virginia.

7th Q. Did you take the regular medical course of the University of Virginia and receive a degree?

A. Yes, sir.

8th Q. What degree did you receive?

A. Doctor of Medicine.

9th Q. After you graduated from the University of Virginia what did you do?

A. I next passed the State Board, which met in Richmond in June, 1897; that was just after I graduated from the University of Virginia. Immediately after I passed the State Board I went to the Memorial Hospital in Orange, N. J., as House Physician. I took the full course there of 12 months as House Physician in Orange Memorial Hospital.

10th Q. What is the nature of the cases treated in that hospital?

A. It is a general hospital. We took all sorts of cases, except contagious diseases; handled all sorts of surgical cases and medical cases and accident cases; then we had a tubercular ward, an isolated ward for tubercular patients; so we got a good general knowledge of medicine and surgery;

11th Q. Did you treat insane patients?

A. Yes, sir; we took such patients under observation.

12th Q. You had a psychopathic ward for observation.

A. Not a psychopathic ward; we had a general ward where the patient was admitted for observation, then he was admitted to the department to which he belonged. If we found a person in need of admission to an insane asylum we committed him to the insane asylum of New Jersey.

13th Q. When did you leave the Orange Memorial Hospital and where did you go?

A. I left there after my year was up; I went there in June, 1897, and I left there in June, 1898. I then went to Gayton, in Henrico County, Va., where the Virginia Coal and Coke Company's mines are. I practiced there for a few months. I took the practice there of a friend of mine, a physician who was a resident there. I left Gayton in the early fall of 1898. I then went to the University of Virginia as instructor or demonstrator of comparative anatomy and I resigned that position to accept a practice at Warm Springs, Bath County, Va., where I practiced for 7 or 8 consecutive years. I left there about 18 months ago.

14th Q. How close to Hot Springs, Va., is Warm Springs, Va.?

A. About 5 miles, the Hot Springs Company owned all of those springs; it is all under one Company—the Hot Springs, the Healing Springs and the Warm Springs. The Hot Springs is the central point, the Warm Springs about 5 miles to the East and the Healing Springs about two miles or two and a half miles to the West of the Hot.

15th Q. Are these resorts for people in search of health?

A. Yes, sir.

16th Q. Was your practice there large or small?

A. I had a large practice.

17th Q. Are there many hotels there?

A. Yes, sir; there are two large hotels at the Hot, one at the Healing and one large hotel at the Warm, and a number of cottages.

18th Q. You are now located in Albemarle County, Va.?

A. Yes, sir.

19th Q. Are you acquainted with John Armstrong Chaloner, the plaintiff in this case?

A. Yes, sir.

20th Q. How long a period have you known the plaintiff?

A. I met him first, I think, in 1891, but I have known him intimately since about 1894.

21st Q. Since 1894 have you been in close touch with the plaintiff, John Armstrong Chaloner?

A. From 1894 to the time he left the community in 1897 I knew him very intimately; I saw him very frequently and after his return I saw him several times extending over a period of seven weeks when I was on a visit to my mother in 1904, when I was practicing at Warm Springs. I came home for a period of 7 weeks in the fall and winter of 1904. For the past 12 months I have seen him very frequently.

22nd Q. State in detail what opportunities you have had to observe the plaintiff since his return to Virginia in 1901?

A. After his return in 1901 the first time I saw him was in 1904. I was practicing in Bath County and had no opportunity to see him, except when I came home, as I have said, on a visit to my mother for seven weeks, and I saw him ten or twelve times during those seven weeks, roughly speaking. I saw him at my mother's home and at his home, I think; I don't know whether I went over there during that time or not, possibly I did; but I met him occasionally about in the neighborhood, and after that I did not see him until about a year ago, something like that.

23rd Q. While you were visiting your mother during the seven weeks, did you frequently visit him at his home?

A. No, because my mother was very ill and I had not the time; but he came over very frequently to inquire after her.

24th Q. Where is your mother's home?

A. At "Keswick," near Cobham, Va.

25th Q. Did the plaintiff ride to your mother's house on horseback?

A. I think he did; it was in the late fall or early winter.

26th Q. Have you, during the last 12 months, attended the plaintiff as a physician?

A. Yes, I have attended him when he needed any attention. Dr. Shackelford was his physician, and Dr. Shackelford got so feeble he could not ride about, could not get about at all, and he asked me to take a good deal of his practice, among others Mr. Chaloner was assigned to me to look after, if he should need any looking after in a medical way; but he has not been sick. He had grip once. I think last May, and now and then he has asked me some question about a trivial matter, such as a disordered digestion, nothing more than that. I have not attended him regularly at all, because he did not need it, but considered myself his physician.

27th Q. Since you have been attending him he has been in perfectly good health?

A. Yes, sir, I considered him to be. I want to qualify that statement—you asked the question if he had been in perfect health. There is hardly any person in perfect health. Everybody is affected more or less, at times, with disordered digestion, or grip, or some such small matter. I consider during the last 12 months since I have been attending Mr. Chaloner as his physician that his health has been far above the average person.

28th Q. When you say hardly any person is in perfect health, do you have reference to any special age or time of life?

A. I mean hardly anybody, adult or old people, who are in perfect health who are not susceptible to acute cold, or disordered digestion, or little things of that sort.

29th Q. When you use the word "susceptible" you do not mean that they are afflicted, do you?

A. No, indeed.

30th Q. Doctor, will you please state how close an observation of the plaintiff, both mentally and physically, you have made during the last 12 months?

A. I have made a very close observation of him. I have seen him frequently; conversed with him on all sorts of subjects; have seen him at his own home and at my mother's home, on an average of about twice a week, I should say, and have observed him very closely.

31st Q. Have you examined his private person?

A. Yes, sir, I have made several complete physical examinations of him.

32nd Q. At whose request did you make these complete physical examinations of him?

A. At his own request and Dr. Shackelford's.

33rd. Q. When did Mr. John Armstrong Chaloner ask you to make a complete physical examination of him.

A. I don't recall the exact date, but it was, I think, in the early spring, I am not positive about that, but I think it was then.

34th Q. What did he say?

A. Said he was suffering with a pain in his back and wanted to be examined for that. I had him stripped and made a thorough examination of him—examined his chest, heart, lungs, pulse and everything. In fact, I made a most complete physical examination of him.

35th Q. Did you make any line of examination as to mental condition?

A. Yes, sir.

36th Q. Before doing so had you made a special study of mental diseases and troubles?

A. I had never made any special study of it before I was requested by him to look into the matter for him.

37th Q. Then what did you do?

A. Then I read the best works I could get on those subjects and applied the knowledge, the information, that I gained from those books to his case. Of course, I knew a good deal about mental diseases already just from the knowledge a general practitioner has. A general practitioner has a certain number of cases to come under his observation.

38th Q. You yourself had certain cases of that character?

A. Yes, sir.

39th Q. Can you recite off-hand what special works you have read?

A. I have read the best and latest that could be gotten. I studied Spitzka, (who is, I suppose, the greatest authority in this country) of New York, and Kraft-Ebbing, Professor of Nervous Diseases at the University of Vienna, and Fredcrick Peterson's work—he is the President of the New York Commission of Lunacy.

40th Q. And other works?

A. Yes, I devoted most of my time to those three works, because they are all considered authorities.

41st Q. How many cases of mental disorders could you roughly say you have had within the last 11 years?

A. It would be very hard for me to say—I should say forty or fifty, perhaps. I would not be positive about that.

42nd Q. Those are cases that came under your personal observation and treatment?

A. A good many were hospital cases that came under my observation. In my private practice I have frequently had to commit cases to the insane asylum and while practicing in the hospital in New Jersey.

43rd Q. And here in Virginia do you make out a certificate setting forth the condition of the patient?

A. Yes, but you don't have to make a diagnosis to the nth degree; that is you don't have to classify them, except as insane patients, not as paretics or paranoiacs.

44th Q. Did you apply this special knowledge which you have obtained in your practice and by reading the works you have named, and also your hospital experience, to the plaintiff John Armstrong Chaloner?

A. Yes, sir.

45th Q. You have testified that you first met the plaintiff in 1891—what was the occasion of your first meeting?

A. The first time I remember meeting him was at a dance that was given at "Keswick," my mother's home, by the school boys. We had boy's school there at the time—my brothers

did—and they gave a dance, and the young ladies from "Castle Hill," the adjoining farm to my mother's, attended the dance with Mr. Chaloner. That is the first time that I remember meeting him, although I had seen him several times before that.

46th Q. Now, from 1894, Doctor, for how long a period did you have an opportunity for observing Mr. John Armstrong Chaloner closely?

A. From 1894 until he left the community, except during his absence. He was absent sometimes for a considerable period of time; but whenever he was in the neighborhood he was a frequent visitor at my home, and I have been very often at his home.

47th Q. During the years 1894, 1895, 1896, and 1897, you followed the study of medicine?

A. Yes, sir.

48th Q. State the opinion that you formed by reason of your acquaintance with and observation of the plaintiff, John Armstrong Chaloner, during the years up to 1897; how would you characterize the opinion which you formed at that time as you saw him and were well acquainted with him in the ordinary walks of life, if you formed any opinion whatsoever?

(By Mr. Choate: Same objection.)

A. I did form an opinion, because I was a close friend and associate, and he struck me as being a very amiable, interesting and intellectual man. He was a highly educated man, and he had an unlimited vocabulary and fine flow of language, and as a conversationalist he was intensely interesting. He struck me as being a very sociable, agreeable companion. He was a man of original ideas, and he sometimes had very strong prejudices, but was always open to conviction, as far as I have been able to judge.

49th Q. Did you have many conversations with him?

A. Oh, yes, have talked with him hours at a time.

50th Q. After Mr. Chaloner left for New York in 1897 when did you next see him?

A. I next saw him in 1904, as I stated before, during a visit that I paid to my mother's home in the fall and winter of 1904.

51st Q. Please characterize what your opinion was as a result of your intercourse with him during the seven weeks you were visiting in Albemarle County in 1904; characterize the opinion you formed at that time?

(By Mr. Choate: Objected as to calling for a conclusion, incompetent and irrelevant.)

A. He was just the same as he always had been—he was still the agreeable, interesting companion.

52nd Q. Did the acts which you have described, up to 1897, did those acts of the plaintiff, John Armstrong Chaloner, impress you as rational or irrational?

(By Mr. Choate: Same objection; also that the witness has not qualified as an expert.)

A. Perfectly rational.

53rd Q. Did the acts of the plaintiff, John Armstrong Chaloner, on the occasions when you saw him when you were on the visit in Albemarle County in 1904, impress you as rational or irrational?

(By Mr. Choate: Same objection, also that the witness is not qualified to testify as an expert.)

54th Q. By Counsel for Plaintiff: Doctor Page, do you know what the disease is which is commonly termed paranoia?

A. Yes, sir.

DISCUSSION OF PARANOIA.

55th Q. Kindly tell us what paranoia is?

A. The English term of it is chronic, delusional insanity; it is characterized by delusions of the systematized kind;

usually they are delusions of persecution, which is the first stage of the disease, and that is usually followed by a delusion of grandeur, and is characterized later by a change of personality. It is chronic and progressive, and considered incurable.

56th Q. Doctor, do you know what the meaning of the word monomania is?

A. The term monomania is similar to that of paranoia; it is the old form that is used for paranoia. Spitzka, for instance, in his works uses the term monomania instead of paranoia always.

57th Q. Can you distinguish dementia from paranoia?

A. Yes, sir, dementia is an organic brain disease, that affects the intellectual spheres; the intelligence is always gravely affected in dementia. Paranoia is purely functional and the intelligence is but little, if at all, affected.

58th Q. Do you know what idiocy is?

A. Idiocy is due to brain defect. that is to say, the brain is undeveloped.

(By Mr. Choate: What is the purpose of this.)

(By Mr. Reed: You have made the statement that the doctor is not qualified to testify as an expert, we are qualifying him.)

(By Mr. Choate: What I mean is that he must qualify in such a way that the Court will be able to pass upon the questions asked him. The Court does not know whether he is a good medical man or not, the Court is not a professor in an university.)

59th Q. By Counsel for Plaintiff: Doctor, have you had any cases in your practice of paranoia, or dementia, or idiocy?

A. Yes, sir.

60th Q. Can you recall right now some of the symptoms of the cases which you had, showing a mental disorder, and characterize those symptoms under their proper heads?

A. Yes, sir.

61st Q. Now, doctor, tell us about some of the cases which you have had of mental disorder, showing the different characteristics?

A. I have had cases of children who were idiots from birth, and the symptoms are manifested as the child develops; the body develops, but the brain does not; and this child, if you took one for example, instead of learning to walk and to speak and to notice things, as a normal child, would be perfectly incapable of learning those ordinary things. It showed that the intelligence was gravely at fault, that the brain was not developing properly. I have had a case of acquired idiocy, where the child developed up to a certain point and then had spinal meningitis, and beyond that point the brain did not develop, so that it was almost complete idiocy, but not quite, because the brain had developed up to a certain point and there it had stopped. The paretic—I have had several cases of paresis under my observation. One case that I remember particularly well was that of a man about middle age, and he acquired paresis. He had the history that most paretics have, of chronic alcoholism and syphilis, and the symptoms developed in the ordinary way. He began to have grandiose ideas, and when he came under my observation he was beginning to suffer from the paralysis that the paretic always has—the progressive paralysis. I did not observe the case very much longer after I made that diagnosis, because I shipped him off to an asylum, and he died there.

62nd Q. What asylum was that?

A. At Staunton, Va.

63rd Q. Did you visit him afterwards?

A. No, but I got reports.

64th Q. Tell us about a case of paranoia in reference to these delusions that you speak of as a condition of diagnosis?

A. I had one case, for instance, while I was at the hospital, that was subject to hallucinations. The case that I mention had hallucinations of sight particularly. She imagined that a lot of negroes were trying to get her; she got

up out of her bed and ran and got in bed with another patient, and when I took her out and tried to quiet her she said she had seen these negroes at the window.

65th Q. Were there any negroes at the window?

A. No, it was the second or third story, about 30 feet from the ground, and nothing under it.

66th Q. You diagnosed that case as paranoia?

A. Yes, sir, acute hallucinatory paranoia. Then I have observed other paranoiacs in my private practice that had chronic systematized delusions, where the delusions predominated instead of hallucinations.

67th Q. What were some of their delusions?

A. I remember one man had the delusion that he owned a great deal of property in the neighborhood, although he was a man of very moderate means, and the first thing we found out about his being insane was his sending a notice to the resident of the adjoining farm to leave the property and get out at a certain date, that it belonged to him: then he developed that theory and tried to prove it legally, and of course failed. This delusion progressed with him to the point where he claimed everything in sight, and he had to be committed to an asylum.

68th Q. Did you act as the committing physician in that case?

A. Yes, sir, one of them.

69th Q. How many were there?

A. Two.

70th Q. Was that patient incarcerated as a case of paranoia?

A. Yes, sir.

71st Q. Go ahead, Doctor, are there any further cases that come to your mind?

A. When I was at Gayton, in Henrico County, Va., I committed a negro to an asylum. I did not observe him long enough to tell that he was suffering from paranoia, but I think now he was. He evidently had delusions it seemed to me from my observation of him, I did not see much of him. I

think they were of a systematized character. He was a man working at the mines and he had nobody to look after him particularly, and there is always a danger in a case of that sort, to allow him to be in a public works, underground, where they carry fire, of doing some damage. Anyhow I had him sent to Richmond, as well as I recollect, I won't be positive.

72nd Q. Did you make a committing certificate in that case together with another physician after your examination of the patient?

A. Yes, sir.

73rd Q. Are there any other cases that you can recall at this time of paranoia?

A. I know that I have had other cases, but I cannot recall them just now.

74th Q. State the different kinds of delusions that exist in paranoia?

A. What do you mean—they are all systematized.

75th Q. Are some of them delusions of a character that make them think they are of great importance?

A. Yes, sir, that is the delusion of grandeur; always in the second stage there are delusions of grandeur; they start off usually with depressive delusions, that is delusions of persecution, hypochrondriacal delusions, and that sort of thing afterwards they develop these delusions of grandeur.

76th Q. What is the third stage?

A. If there is a third stage, and there usually is, there is a change of personality, that is, a man imagines that he is somebody else—that he is the emperor, or king, duke, or count, or something of that sort.

77th Q. You said a moment ago that you were undecided as to whether the patient whom you referred to as a negro, did or did not have paranoia?

A. Yes, sir.

78th Q. You said you did not observe him long enough to tell whether it was paranoia?

A. Yes, I think in a case of paranoia you have to observe your patient for a long time. I did not have time to observe

that negro long enough to be able to tell whether it was paranoia or not. Another reason is, a man expressing a delusion is not sufficient, he has to live up to that delusion. You have got to observe him long enough to see if he lives up to his delusion. He may be pretending.

79th Q. Is that what you call a consistent delusion?

A. Yes, sir.

80th Q. In other words, in order to determine whether a person is a paranoiac, the delusion must be shown consistent?

A. Yes, sir.

81st Q. Would it require a period of longer than a month to properly diagnose a case of paranoia?

A. I think that would depend largely upon the prominence of the symptoms, but there are cases of paranoia that could not be properly diagnosed under a good many months. I don't think for the average case a month is long enough. I think there are some cases that the symptoms are prominent enough to make a diagnosis in that time but the safest way is to put the person somewhere for observation long enough and then if he lives up to his theory you can classify him as a paranoiac; but committing a man to an asylum you don't have to classify him, you just commit him as insane.

82nd Q. Have you known cases where it would require an observation of six months before the proper diagnosis of a paranoiac could be made?

A. Yes, sir, I have known cases where it would require a long time. I might add there are cases of original paranoia, where the child is affected with paranoia from its birth, practically during its whole life, and the disease is not developed fully until later years. Sometimes it develops even in early childhood. Krafft-Ebbing claims that he has never seen a case of paranoia that did not have a hereditary taint. He defines them as paranoia in childhood, or original paranoia, and those who are affected with the disease later in life, or late paranoia. In case of hereditary paranoia you might not recognize it as such for a number of years. The acts of the child are peculiar to a certain extent, but it would

be impossible to make a diagnosis, unless you base your diagnosis upon family history. Some cases require years to make a positive diagnosis; others you can make a diagnosis in a shorter time; depends entirely on the prominence of the symptoms. There are some cases where the symptoms are so prominent that there is no reasonable doubt that it is paranoia.

83rd Q. E. C. Spitzka in his book on Insanity, its Classification, Diagnoses and Treatment, published by E. B. Treat & Co., (1900), says: "Paranoia is a chronic form of insanity based on an acquired or transmitted neurodegenerative taint and manifesting itself in anomalies of the conceptional sphere, which, while they do not destructively involve the entire mental mechanism dominate it." Do you recognize that as an authoritative definition of paranoia?

A. That is a very good definition of it; that is as good as any other, it is a little complicated.

84th Q. May you have delirium in paranoia?

A. Yes, you may have a certain sort of delirium.

85th Q. Do you find systematized, fixed delusions in paranoia?

A. Always.

86th Q. Do you find any compliance with the demands of logic and consistency in paranoia?

A. Oh, yes, the paranoiac is usually very logical in his deductions and his conclusion would be correct, except his premises are false; he starts to argue from a false premise, therefore he reaches a false conclusion.

87th Q. May elements of paranoia be found in the brain after death?

A. No, sir, there is no specific change in the brain that you can diagnose the disease by; the post-mortem signs are almost zero.

88th Q. Dr. Mann Page, would the fact that the pulse was rapid, or irregular, or slow, be any necessary part in the diagnosis of paranoia?

A. No, sir; they may have almost any sort of pulse in paranoia.

89th Q. Would it be possible to have a patient suffering from paranoia with a slow pulse or a rapid pulse?

A. Yes, sir.

90th Q. The elements of the rapidity of the pulse is not a necessary part of the diagnosis?

A. No.

91st Q. Would the fact that the tongue was coated form an element in a case of a patient suffering from paranoia?

A. No, sir; these are not diagnostic signs at all; they are merely physical signs of a deranged digestion, or a deranged circulation; they don't indicate any brain disease. In examining a patient, whether mental or not, we always take the pulse and examine the tongue, to get an idea of his general physical condition.

92nd Q. Is the tremulous character of the lips and tongue a diagnostic sign of the paranoiac?

A. No.

93rd Q. Is the fact that the hands are cold and tremulous a diagnostic sign of paranoia?

A. No.

94th Q. Given a case where the pulse is rapid, the tongue coated, the lips and tongue tremulous, the hands cold and tremulous, the patient under some excitement, the patient disregarding his health and thereby injuring his person by disregard of his health and diet, would that be sufficient to make a diagnosis of paranoia?

A. No, sir.

95th Q. Would there be any element in that condition that would lead you to believe the patient was a paranoiac subject?

A. No, sir.

96th Q. Doctor, supposing all of the conditions to exist, the condition of the pulse, tongue, lips and hands—the hands being cold and tremulous, the lips and tongue tremulous, the tongue coated and the pulse rapid, and suppose a man of 35 years of age, or thereabouts, while at his home in Virginia, acts in an erratic manner, limits himself to a peculiar diet,

and suppose this person has devised many projects such as a roulette scheme to beat Monte Carlo, and suppose that he gives as a reason for this and for other acts of his, that he is inspired by a spirit that directs him, and suppose that this person leaves his home in Virginia and goes to New York, and while in New York for a period of three weeks constantly talks of these ideas of his and neglects his health and thereby injures his person, would a person under those conditions that I have indicated be a sufferer of the disease known as paranoia?

A. I could not tell under those data what he was suffering from; I don't think that would be enough to make a diagnosis from.

97th Q. On such a state of facts would you personally sign a commitment certificate for him as an insane person?

A. Not on that alone.

98th Q. May a person be suffering from the stress of excitement, even from great excitement, without necessarily being an insane subject?

A. Certainly.

99th Q. May a person neglect his health without being a paranoiac?

A. Yes; I suppose every normal individual neglects his health at times.

100th Q. May a person talk volubly, both in French and in English, and believe that he is directed by a divine power or spirit, and may he devise a scheme of chance for the purpose of gambling at Monte Carlo, and may he have the belief that he is immortal, after death, and that he will not come to harm by reason of his belief that nothing can harm him; may he expose himself to cold, neglect ordinary clothing and food; may he become suspicious of friends and live alone in his own home, without being diagnosed as a paranoiac subject?

A. It would depend largely upon the person who was affected in that way, and whether he really believes what he

said. I think that any one who really had the belief that he was immortal would either be lying or crazy.

101st Q. Don't you believe in immortality?

A. I believe in immortality after death. I don't think any of these things need necessarily mean insanity.

102nd Q. Doctor, do you know what the diagnosis was that was made by Dr. Austin Flint and Dr. Carlos Macdonald of Mr. Chaloner back in 1899, or thereabouts.

A. I have read their diagnosis of his case as it was tried there; I don't know of my personal knowledge anything about it.

103rd Q. Do you know what they pronounced Mr. Chaloner's case to be?

A. Yes; they pronounced it paranoia.

104th Q. In so pronouncing it to be paranoia, did you understand they diagnosed it to be chronic, delusional insanity?

A. Yes, sir.

105th Q. What is the ultimate result of chronic delusional insanity in a patient; what does it lead to?

A. It does not usually lead to any terminal condition; there are very few paranoiacs that don't die of something else; it is said by some authorities to terminate in dementia, but the best authorities on the subject contradict that statement and say that pure paranoia, uncomplicated paranoia, does not terminate in dementia. Dementia, as I said before, is an organic brain disease that affects the intelligence. In paranoia the intellect is very little, if any, affected, and it does not terminate except by some inter-current disease; for instance, paranoiacs may have paresis, just as a paranoiac may have consumption and die of consumption; but the course of paranoia is not in my opinion towards dementia. The termination is usually a progressive increase of the trouble. Generally the patients get gradually worse and worse in their delusions and filled up more and more with their delusions as the time goes on, until finally they merely live in their net-work of delusions. That is usually the termination of

their disease, unless they die of some intercurrent disease. But paranoia is not a fatal disease, as paresis is.

106th Q. Doctor, in your opinion, would a person who was suffering from chronic, delusional insanity be unable to take care of himself?

A. That depends largely upon the character of his delusions; there are certain cases of paranoia that go through life and attend to their business and do it very well and lead a perfectly correct life outside of certain fixed delusions. Monomania is the old term that was used, and a monomaniac is a person who is crazy on one subject. A pronounced case of paranoia, I think, would be incompetent to manage his business and estate.

107th Q. Would a paranoic who was found to be dangerous to himself and to others, a paranoiac who became wildly excited and threatened personal violence, be unable to take care of himself and person?

A. A man of that kind ought to be confined in an asylum.

DIAGNOSIS OF DOCTORS FLINT AND MACDONALD DISPROVED.

108th Q. You say you have read the diagnosis of Doctors Flint and Macdonald—in your opinion would it be possible, if this diagnosis had been true when made, for Mr. Chaloner to have managed himself and property for a period of eight consecutive years, from 1900 to 1908, or up to the present time?

(By Mr. Choate: I object to that, unless it is shown that the diagnosis that the witness has read was the one that was actually given by the doctors in question.)

109th Q. By Counsel for Plaintiff: Dr. Page, I show you what purports to be a copy of a certain diagnosis, in the form of an affidavit of Austin Flint, dated the 8th day of May, 1899, and also what purports to be a copy of a certified copy of a diagnosis of the form of an affidavit of Dr. Carlos

F. Macdonald, dated the 5th day of May, 1899, will you kindly look at this and tell the Court whether you have read that affidavit of Dr. Flint and that affidavit of Dr. MacDonald?

A. Yes, sir.

110th Q. Doctor, in your opinion, would it have been possible, if the statements contained in these two affidavits of Dr. Flint and Dr. Macdonald were true, for the person therein referred to as Mr. Chanler to have taken care of himself and his property for a period of eight years afterwards?

(By Mr. Choate: I object to that as hypothetical and calling for a conclusion; incompetent and immaterial; and also on the ground that the witness is not qualified to answer.)

A. He would not be able to take care of his person and estate if the opinions of these doctors had been correct.

(By Mr. Reed: I offer this Exhibit B in evidence and annex it with the testimony.)

111th Q. If the statements of fact upon which the opinions of Doctors Flint and Macdonald were based, were true as set out in the affidavits which I have shown you, marked "Plaintiff's Exhibit B" what would Mr. Chaloner's condition be?

(By Mr. Choate: I object to that as speculative and on the ground that the witness is not qualified to answer.)

A. If you include the prognosis, as well as the diagnosis in my opinion, he would be demented; but my opinion is that paranoia does not terminate in dementia. When I say that he would be demented, my opinion is based upon the opinion they have formed there.

112th Q. Then, in your opinion, if the conclusions of the learned doctors who made those two affidavits were correct,

would the patient referred to therein, Mr. Chaloner, have been at the present time rational or irrational?

(By Mr. Choate: Same objection.)

A. Irrational.

113th Q. What would his physical condition be?

(By Mr. Choate: Same objection.)

A. He would be demented, unable to care for himself at all, slobbering at the mouth, unable to feed himself, and would have to be cared for by an attendant, who would practically have to care for him as a child. My idea is (though it is not my opinion of the termination of paranoia)—that is, based upon the prognosis that is made in those affidavits—that the case would terminate in dementia.

114th Q. Have you at any time found any of these elements of dementia, which you say would exist at the present time if the conclusions of these doctors were correct, in the plaintiff, John Armstrong Chaloner?

(By Mr. Choate: I object to that as a hypothetical question based on facts not in the testimony, and as immaterial and irrelevant, and on the ground that the witness is not qualified to answer.)

A. I have not.

115th Q. Doctor, basing your answer upon your acquaintance with the plaintiff and what you have seen of him and his acts and demeanor on the occasions of your conferences with him, which you have described, did he impress you as rational or irrational?

(By Mr. Choate: I object to that as incompetent, immaterial, as calling for a conclusion, and on the ground that the witness is not qualified to answer as an expert.)

A. Do you mean that to include the whole term of my acquaintance with him?

116th Q. Yes, sir.

A. Rational.

117th Q. The acts which you have described, doctor, prior to Mr. Chaloner's departure to New York, can you characterize them as rational or irrational?

(By Mr. Choate: Same objection.)

A. Perfectly rational.

118th Q. From the time you first met the plaintiff, John Armstrong Chaloner, in 1891 to February, 1897, what as a friend and neighbor and frequent visitor and associate, if anything, did you observe in the plaintiff's conduct or appearance that would lead you to believe him to be a paranoiac or monomaniac, or in any way mentally deficient or insane?

(By Mr. Choate: Same objection.)

A. I observed nothing irrational in his appearance or conduct at any time; on the contrary he struck me as being a very reasonable, mentally sound man.

119th Q. In your opinion, doctor, what is the very shortest time a patient should be observed to allow a physician sufficient time to state positively whether the patient is a paranoiac or monomaniac?

(By Mr. Choate: I object to that as speculative and on the ground that the witness is not qualified as an expert to answer.)

A. I think it would depend almost entirely upon the prominency of the symptoms; I think in some cases you can make a very positive diagnosis of paranoia after observing the patient for a short time, and others, as I said before, you have to observe them for months.

120th Q. Is it possible for a physician to incorrectly diagnose a case as paranoia?

A. Yes, sir.

121st Q. Do you find that it is frequently done?

(By Mr. Choate: Objected to as incompetent.)

A. Yes, sir.

122nd Q. Have you known cases where there were conflicting diagnoses?

(By Mr. Choate: Same objection.)

A. Yes, sir.

123rd Q. Doctor, you understand that you are called here on the part of the plaintiff to give your testimony, which you have gathered through your personal intimacy and acquaintance with him; is there now anything that you desire to state in the plaintiff's behalf upon the issues in this case?

(By Mr. Choate: Objected to as too general, incompetent, irrelevant and immaterial.)

A. I don't think that there is anything I can add to what I have already said, except that he is all right as far as I have been able to observe through the long acquaintance I have had with him, and that he is a perfectly rational, sane man.

124th Q. There is one question I neglected to ask you—did you ever make a physical examination of the plaintiff's back and spine?

A. Yes, sir.

125th Q. When did you last make it?

A. I answered that once before, in regard to the physical examination; I said that I examined him after I became his family physician in the spring.

126th Q. What diagnosis did you make of him?

A. I came to the conclusion that he had no organic spinal disease. There was absolutely no paralysis of any of the muscles; there was no atrophy; no characteristic signs of inflammation of the nerves or neuritis, no swelling or redness. The pain that he suffered I attributed to neuralgia.

127th Q. Neuralgia of what?

A. All of the muscles of the lower part of the spine seemed to be affected with neuralgia.

128th Q. How complete was that affection?

A. How do you mean?

129th Q. How serious were the symptoms of it?

A. I could not tell exactly how much pain Mr. Chaloner was suffering; he had to tell me. He said he suffered sufficiently to inconvenience him a great deal. I frequently had to put porous plasters on his back, and advise him to rest his back; to lie down, if he could, in order to rest his back; told him what I thought about the proper way to take exercise, and that sort of thing; it was not complete enough to incommode his movements to any extent; that is to say, he had perfect control over the muscles, but there was pain along the base of the spine; there was tenderness to some extent, not sufficient to characterize it as neuritis, but rather as a neuralgia, which, in my opinion, it was.

130th Q. That neuralgia of the muscles—would that neuralgia of the muscles prevent, or not, his horseback riding?

A. Not necessarily.

131st Q. Are you a brother of Dr. J. M. Page, who testified in the 1901 proceedings in Albemarle County?

A. Yes, sir.

132nd Q. Will you please state where Dr. J. M. Page is?

A. He is sick at my mother's home.

133rd Q. What is his condition?

A. He met with a runaway accident up here some little time ago; although he did not sustain very severe, physical injury, he sustained a severe nervous shock, and he has since been suffering with a sort of neuritis of the legs, which inconveniences him so much that he could hardly get about,

and I advised him to take a rest. I thought mental work was not the proper thing for him at that time, and he was working very hard, so he decided to go down to our mother's home for as long a time as he could spare, and I have just heard to-day that his wife has been sent for, as he was decidedly worse.

CROSS EXAMINATION.

1st Q. By Counsel for Defendant: Have you any other brother?

A. Yes, sir; Dr. Thomas W. Page.

2nd Q. Mr. Chaloner has been very intimate with all your family for a long time, has he not?

A. Yes, sir.

3rd Q. Very good friend to you all?

A. Yes, sir.

4th Q. Are you not all, to a certain extent, under obligations to Mr. Chaloner?

(By Mr. Reed: I object to that as incompetent, immaterial and irrelevant.)

A. Yes, sir.

5th Q. Did you not know that Mr. Chaloner had made a will a short time before he went to New York in 1897?

A. I did not know it at all.

6th Q. Did not know it?

A. No.

7th Q. Did you not know that he had made a will at any time before that?

A. No, sir; I did not know anything about his affairs I understood (I don't know whether he told me or somebody else) that he had made a will at some time or other, leaving his property to the University of Virginia.

8th Q. You did not understand that in a will which Mr. Chaloner made, he left considerable legacies to members of your family?

(By Mr. Reed: I object to that as hearsay, irrelevant and immaterial.)

A. No, sir.

9th Q. I understand you to say that you had never made any specialty of the study of mental diseases?

A. I never made any special study until I took up this particular case.

10th Q. And when you took up the study of this particular case you read among other works, Spitzka, Krafft-Ebbing and Peterson?

A. Yes, sir.

11th Q. Did you read any other works that you can recall.

A. I read Dr. Hammond on insanity, and I read various articles in the New York Lunacy Statistics, and I have read the Psychological Journals. I don't think there is any other standard work that I have studied particularly.

12th Q. Have you read Hyr works on insanity?

A. No, sir.

13th Q. Have you ever read Drummond's Nervous Diseases?

A. No, sir.

14th Q. Why did you read these works which you have stated that you read?

A. I thought they were the best. Mr. Chaloner asked me to look into this matter for him and to do this reading with a view to forming an opinion as to his mental condition.

15th Q. That is, you read them in order to prepare yourself to testify as an expert?

A. Yes, sir, if necessary.

16th Q. Then you did not regard the experience which you had had up to that time as in itself sufficient to qualify you to testify as an expert on insanity?

(By Mr. Reed: I object to that as immaterial and not proper cross-examination.)

A. In answering that question I would say it depends upon the amount of knowledge that you consider necessary to qualify as an expert; but I considered that I knew enough about mental diseases to make a diagnosis in any case that came to my hands as a general practitioner. That I have done for years. I did not consider the question of being an expert at all, one way or the other; I thought I was sufficiently able to make a diagnosis of mental diseases; I had done it before.

17th Q. Since you have testified in your direct examination have you been able to think of any more cases of paranoia that you have met in your practice?

A. No definite cases that I could call paranoia. I have committed at various times patients to the lunatic asylum that I think were suffering with paranoia. Where the symptoms are indefinite, or not very pronounced, that you have to observe a good long time, the general practitioner sends those cases to the asylums, and there they are put in the observation ward until they are classified and divided into their proper rooms.

18th Q. In the three cases which you mentioned one, I understand, had alienation of an extreme kind?

A. Yes.

19th Q. That is, hers was the kind of mania that could not be mistaken?

A. Yes; I did not consider her a maniac exactly, because her alienation was attacks of a terrifying kind. In mania the patient is usually violent.

20th Q. I was using the word technically—no one would have doubted that she was a paranoiac?

A. No, sir.

21st Q. So in the case of the patient who thought he owned all the land adjoining him? No doubt about it?

A. No.

22nd Q. In the third case, of the negro, there was so much doubt that you don't know whether he had paranoia, or not?

A. No, sir.

23rd Q. Why did you leave your practice in Warm Springs?

(By Mr. Reed: I object to that as immaterial.)

A. The climate was very cold over there in winter, and I had to do a great deal of hard work out in the mountains there—stayed out sometimes two or three nights hand-running and my health was about broken down, so I decided to come east.

24th Q. Are you practicing actively now?

A. No, not actively, am doing some practice, but have not established myself as a general practitioner.

25th Q. Is this climate materially different from that of Warm Springs?

A. Very different.

26th Q. On your direct examination Mr. Reed asked you a hypothetical question, and asked you if upon the facts stated you could diagnose the case as one of paranoia; do you recall the facts of that hypothetical question?

A. Yes, sir.

27th Q. Your answer was that you could not diagnose it as a case of paranoia?

A. I said that I would not make any diagnosis, that the data was not sufficient.

28th Q. So that if an alienist whom you recognized as competent, saw the case, diagnosed it as paranoia, and gave as his reason for such diagnosis the facts stated in Mr. Reed's hypothetical question, you would not say that the diagnosis was wrong, would you?

A. No, I would not say that it was right or wrong, but I think it was insufficient data to make out a diagnosis.

29th Q. You regard Dr. Austin Flint as an alienist of high reputation and authority, do you not?

A. I really do not know much about Dr. Austin Flint; I have one book that he is the author of and know that he has written quite a good deal about different branches of medicine,

and I know that he makes a specialty of nervous diseases, bu I know nothing of his standing as an alienist.

30th Q. You know that he has a wide reputation?

A. Yes.

31st Q. And that his books are used as authorities?

A. No, I do not.

32nd Q. Dr. Carlos Macdonald is considered an alienis of high authority, is he not?

A. I don't know much about that.

33rd Q. Dr. Starr is also considered an alienist of hig authority, is he not?

(By Mr. Reed: Objected to as immaterial.)

A. Yes, sir.

34th Q. Delusions of persecution are among the commo characteristics of paranoia, are they not?

A. Yes.

35th Q. Is it not true that one of the commonest form of this delusion is that a conspiracy exists against the patient

A. That is one of the common forms, persecutory delu sions are a very common form of paranoia.

31st Q. Is it a very common form of paranoia for th ient to imagine that prominent persons are in conspiracy gainst him?

A. Yes.

32nd Q. Is it not also a form of paranoiac delusion fo the patient to imagine he is some prominent person in his tory, or the reincarnation of some prominent person in his tory?

A. Yes, sir.

33rd Q. Is it not a common form of paranoiac delusio for the patient to suppose that he has remarkable powers o one sort or another; that he is the greatest poet or greates general in history, or something of that kind?

A. I stated that the delusion of grandeur followed th

delusion of persecution, that is common in the second stage of the disease.

34th Q. You don't regard paranoia as necessarily progressive?

A. I do.

35th Q. That is, you consider a paranoic would necessarily deteriorate in mind and body?

A. No, I said the disease was progressive; it is a functional disease, not an organic one. He need not deteriorate in body at all, and all his faculties are intact, except he has these delusions.

36th Q. Paranoia is the form of insanity which is sometimes said to be allied with genius?

A. Yes, sir.

37th Q. That is, a paranoiac may have and attain very high mental abilities?

A. I consider they do sometimes.

38th Q. Retaining them for long periods, for years?

A. I think the time is very indefinite as to how long it may be retained.

39th Q. So that a man might be a paranoiac and for eight or ten years thereafter his mental powers may remain substantially unabated?

A. I said the time was very indefinite, but until his death his intellect may remain intact; his intelligence is hardly ever affected; his disease is progressive along the lines of his fixed delusions; there is always an increase in the absolute quality of delusions.

40th Q. Are there, in your opinion, lucid intervals in paranoia when the delusions do not exist?

A. I don't think, properly speaking, that a true paranoiac is ever free from the delusions; I believe that after a time they become more accustomed to them, and sometimes intentionally conceal them for a time; but I don't think, as I understand the term lucid intervals, that a paranoiac has what I consider lucid intervals, when he is a normal person for any considerable length of time.

41st Q. Your view is, then, that if at any time a paranoiac is touched upon the subject of one of his delusions the delusion will reappear?

A. No, not at all, not necessarily; he may intentionally conceal it; I think that the delusion is present, but I do not think that by just touching upon it that he would necessarily bring it out.

42nd Q. The absence of the delusion during a period of time would not be an evidence that the patient was not a paranoiac?

A. Not positively so, but the absence of delusion for a considerable length of time I think would establish the fact that he was sane.

43rd Q. Even if the delusion should recur thereafter?

A. No.

44th Q. Would observation for a period of one year, during which a patient was confined in an institution be sufficient, in your judgment, to base a diagnosis upon in the case of a paranoiac?

A. I think in an average case it would.

45th Q. Would it not in any case?

A. I have just said that some cases cannot be diagnosed for years. In original paranoia, where the disease affects the child in infancy there is no development for years.

46th Q. In the case of a person of 35 years, could there be any difficulty in diagnosing after being confined for a year?

A. There should not be.

47th Q. Did the plaintiff in this case ever talk to you about any of his alleged psychological experiments?

A. No, I don't think so, I never took any stock in that sort of thing myself, and don't pretend to understand psychology.

48th Q. He never made any effort to explain them to you?

A. No, I think not.

49th Q. Did he ever explain to you that his family had

conspired against him to bring about his confinement in "Bloomingdale" Asylum?

A. I have heard him say that; I don't think that he explained to me about it.

50th Q. Did he also say that with his family other persons had conspired to the same end?

A. I think one other person. I heard him say that Stanford White was concerned in his commitment.

51st Q. You never heard him say that there were other persons who conspired at that time to that end?

A. No.

52nd Q. Did you ever hear him say that other persons besides his family conspired to appoint a committee for his person and estate?

A. I have heard him mention a good many names, but I don't know whether he really considered that they had conspired against him or not; I don't think he said so.

53rd Q. You don't recall that he stated that among the conspirators were the governors of the Society of the New York Hospital.

(By Mr. Reed: I object to that as already answered.)

A. No, sir.

54th Q. You don't recall to have heard him state that various judges of the Supreme Court of New York were involved in this conspiracy?

A. No, sir.

55th Q. So that in forming your opinion you have not taken into consideration any of the statements which I have just mentioned?

A. No, sir, you mean in forming an independent opinion. My own independent opinion was formed outside of those things. I never heard of a great many of the names you have mentioned at all.

56th Q. Are you familiar with the plaintiff's poetical works?

A. No.

57th Q. Your opinion was formed without reference to them?

A. Yes.

58th Q. Without reference to any of his writings?

A. You mean my opinion as to his sanity?

59th Q. Yes?

A. Yes, unless you regard correspondence as part of his writings. I have frequently got letters from him. I took those in, just as I did his other acts, in making my diagnosis. I never noticed anything that was not perfectly conventional and ordinary about his letters.

60th Q. Have you read his book, entitled "Four Years Behind the Bars of 'Bloomingdale,' or the Bankruptcy of Law in New York"?

A. I have skimmed over parts of it, have not read it carefully, I have not read it all.

RE-DIRECT EXAMINATION.

1st Q. By Counsel for Plaintiff: Dr. Page, the obligations which you said you were under to Mr. Chaloner, were they or not for education?

A. Yes, sir.

2nd Q. There are no obligations which you are under to Mr. Chaloner which would make your evidence favor him improperly?

A. Not at all.

3rd Q. Is it not common among persons who are absolutely sane to believe that they can do things better than some other?

A. Yes, sir.

4th Q. Is paranoia considered incurable?

A. Yes, sir.

5th Q. You never saw anything in the books by Dr. Flint or Dr. Macdonald in regard to paranoia?

A. No, I have seen a book by Dr. Austin Flint on Diseases of the Chest.

RE-CROSS EXAMINATION.

1st Q. By Counsel for Defendant: When you examined the plaintiff as to his spinal trouble you could not find any organic symptoms, could you?

A. No, sir.

2nd Q. So the only way you told was by what he told you he was suffering?

A. Yes, sir.

2ND RE-DIRECT EXAMINATION.

1st Q. By Counsel for Plaintiff: You are a constant reader of books on medicine and pamphlets on medicine, irrespective of insanity subjects, are you not?

A. Yes, sir.

And further this deponent saith not.

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PLAINTIFF AN ELK.

Testimony J. Anderson Chisholm, 180-186.

J. A. CHISHOLM, being first duly cautioned and duly sworn to tell the whole truth, deposes and testifies as follows:

1st Q. By Counsel for Plaintiff: Please state your name and age.

A. John Anderson Chisholm, 46.

2nd Q. Where do you reside?

A. Albemarle County, Va.

3rd Q. Where did you reside in 1896 and 1897?

A. At "Cloverfields," Frank M. Randolph's place. No, I was at "Edge Hill" in 1896 and 1897, the home of Miss Randolph.

4th Q. How far is that from the plaintiff's residence, "The Merry Mills"?

A. I should say about 6 miles.

5th Q. Did you know the plaintiff well before February, 1897?

A. I met the plaintiff in 1894.

6th Q. Did you see much of him after that?

A. I can't say I saw a great deal of him, I would meet him from time to time on different occasions.

7th Q. Where did you meet him?

A. At Mr. Randolph's, at his home and horseback riding, and different places, from time to time.

8th Q. Did he go around as other people did in the neighborhood?

A. Yes, was entertained at all the houses in the county.

10th Q. Did you see him in 1896?

A. Yes, I saw him in 1896. I was married in 1896, and I happened to be at Mr. Money's house, calling on my present wife, who was there visiting Mrs. Money.

11th Q. Did you see him at races or football games?

A. No, sir.

12th Q. How did he act in 1896?

A. I found him to be a very affable gentleman and I was very fond of him.

13th Q. Did he act in a normal way?

(By Mr. Choate: Same objection.)

A. Very natural and rational.

14th Q. How did he look and talk?

A. I was pleased to be in his society, thought his conversation was elevating.

15th Q. Did you see anything from his acts, looks or speech prior to February, 1897, to suggest to you that he was irrational?

(By Mr. Choate: Same objection.)

A. I did not.

16th Q. Mr. Chisholm, from the acts of Mr. John Armstrong Chaloner which you observed until February, 1897,

during your acquaintance and business relations with him, and which you have described, did they impress you so that you formed an opinion as to whether his acts were rational or not?

A. Yes, sir.

17th Q. Please state how they impressed you?

(By Mr. Choate: Same objection.)

A. They impressed me that he was a gentleman I was glad to have come around where I was living and sit down and chat with in a social way.

18th Q. And by reason of these acts which you have described and your intercourse with him did he impress you as rational or irrational?

A. Rational.

19th Q. You are a large property holder, are you not?

A. I have about 350 acres of land, about 1 1-2 miles from Charlottesville.

20th Q. From your acquaintance and relations with the plaintiff, what is your opinion whether he is rational or irrational?

(By Mr. Choate: Same objection.)

A. Undoubtedly rational.

21st Q. Have you ever seen anything which you would classify as irrational in him?

(By Mr. Choate: Same objection.)

A. No, on the contrary, if I had thought any such thing of him I could not have vouched for him and taken an obligation for him.

22nd Q. You have vouched for him and taken an obligation for him?

A. Yes, sir.

23rd Q. Are you a member of the Elk's Lodge?

A. Yes, I am a Past Exalted Ruler of the Elk's Lodge.

24th Q. What is the official name of this lodge?

A. Benevolent and Protective Order of Elks.

25th Q. Is the plaintiff a member of this Elk's Lodge?

A. He is a member of Charlottesville Lodge, No. 389.

26th Q. Are you a member of the same lodge?

A. Yes, I initiated him; I was Exalted Ruler of the lodge at that time.

27th Q. How many members are there of this particular Lodge?

A. I should say between 175 and 180.

28th Q. When did you initiate the plaintiff?

A. I think it was either last January or February.

29th Q. Within the last year?

A. Yes, within the last year.

CROSS-EXAMINATION.

1st Q. By Counsel for Defendant: Mr. Chisholm, have you ever had any business relations with the plaintiff?

A. No, sir.

2nd Q. Where were you in 1901?

A. I think I spent most of the time in Asheville, and Savannah, Ga.

3rd Q. How long were you away from this county between 1897 and 1907?

A. About a year and a half.

4th Q. Have you ever talked with the plaintiff about this case?

A. Never had the slightest word with him about it.

5th Q. So he has never told you about any conspiracy on the part of his family or other persons to get him in "Bloomingdale" Asylum?

A. No, he has never spoken to me about his case.

6th Q. Has he ever talked to you about his literary attainments?

A. No, I am one of the few he never even sent a book to.

7th Q. Has he ever told you of his resembling any famous man?

A. No, I have heard of that, but he never said anything to me about it.

8th Q. Did you ever hear him talk about the Supreme Court of New York?

A. I never have.

9th Q. Did you ever hear him talk about the state of the law in New York?

A. No, it is strange, too, because he knew my father was a lawyer, but he never mentioned the subject to me.

10th Q. Your talks have been entirely on social matters?

A. Yes, entirely; fox hunting and things of the kind.

11th Q. Have you ever had anything to do with an insane or irrational person?

A. No.

RE-DIRECT EXAMINATION.

1st Q. By Counsel for Plaintiff: You were called here to testify on behalf of the plaintiff, is there anything further you wish to say for his benefit?

(Objected to as incompetent and too general.)

A. I would like to say that I have been entertained at his house, and I would have no hesitancy in taking any of my friends there at any time, and I would be glad to have him come to my house and bring any of his friends at any time he desires to do so.

RE-CROSS EXAMINATION.

1st Q. By Counsel for Defendant: Have you ever read the plaintiff's book, entitled "Four Years Behind the Bars of Bloomingdale"?

A. Not all, I have read part of it.

2nd Q. You are not under any obligation to the plaintiff, are you?

A. No, I am not under the slightest obligation to anybody in Virginia.

3rd Q. You came here freely and voluntarily to testify in behalf of the plaintiff?

A. Yes.

4th Q. Your testimony is entirely without prejudice?

A. Yes.

And further this deponent saith not.

PLAINTIFF A GOOD CITIZEN.

Testimony Sheriff Lucien C. Watts, 187-194.

LUCIEN C. WATTS, being first cautioned and duly sworn to testify the whole truth, deposes and testifies as follows:

1st Q. By Counsel for Plaintiff: Please give your name and age?

A. Lucien C. Watts, 55.

2nd Q. Where do you reside?

A. North side of Albemarle County, 12 miles from Charlottesville.

3rd Q. Do you hold any office in the State of Virginia?

A. Yes: I am sheriff of this county.

4th Q. How long have you been sheriff of this county?

A. 21 years.

5th Q. How long have you known the plaintiff?

A. It has been about 12 or 13 years since I first met Mr. Chaloner.

6th Q. Did you see him in 1896 or 1897, prior to his going to New York?

A Yes, sir.

7th Q When and where did you see him?

A. The first time I ever met him was at a race meeting in Louisa.

8th Q. When was that?

A. 12 or 13 years ago, that was the first time I ever met him; I was introduced to Mr. Chaloner down there.

9th Q. When did you see him again?

A. The next time, to be positive about it, was at a ball game over on my side of the county.

10th Q. Were those two times prior to his going to New York?

A. I could not tell you, I have so many things to attend to that I cannot remember dates.

11th Q. Did you see him any other time prior to his going to New York?

A. Yes, I would meet him occasionally; I have seen him at different times, and always had a hand-shake and talk with him; but as to saying when I met him and where, I cannot say.

12th Q. Did you see him in 1896 or 1897, prior to his going to New York in February, 1897?

A. I don't know how near it was prior to his going to New York when I saw him, I can't say.

13th Q. The last time you saw him prior to his going to New York how did he look and act and talk?

(By Mr. Choate: Same objection.)

A. I saw nothing that was out of the common from any other gentleman that I knew in the county, nothing that struck me; I never thought of such a thing.

14th Q. Did you ever, prior to February, 1897, see anything about his acts, looks or speech, to indicate that he was irrational?

(By Mr. Choate: Same objection.)

A. Nothing; nothing to make me take any notice; I never thought of such a thing.

15th Q. Did his acts, prior to February, 1897, which you have referred to, impress you as being rational or irrational?

(By Mr. Choate: Same objection.)

A. Entirely rational and perfectly sane and competent.

16th Q. How did he impress you as a man?

(By Mr. Choate: Same objection.)

A. As a man that wanted the citizens to like him and who wanted to be a good citizen of the county.

17th Q. Did you see him in 1901, after he returned to Virginia and before the Albemarle County proceedings?

A. Yes, sir.

18th Q. Were you present in court during the Albemarle County proceedings in 1901?

A. Yes, sir.

19th Q. Were you present during the taking of the whole testimony in the Albemarle County proceedings in 1901?

A. I was there most of the time.

20th Q. How did the plaintiff act after he returned to Virginia before the Albemarle County proceedings in 1901?

(By Mr. Choate: Same objection.)

A. The first time I saw him after he came back I met him in Capt. Woods' office. I had not seen him during all this time he had been gone, but he came right up to me and said "Sheriff, how are you?" He and Mr. Jefferson Levy were in Capt. Woods' office talking.

21st Q. What were they talking about?

A. He and Mr. Levy talked about the stock market in New York and social things here. I watched Mr. Chaloner very closely. These reports had gotten out about his mental condition, and I had been used to watching people for 30 years in connection with my official duties, so I watched him pretty closely in order to see what I thought of his condition. He looked to me like he always did—like he did before he went away, only he looked to be fatter and stronger.

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22nd Q. Was there anything about his acts, looks or eech to indicate that he was irrational?

(By Mr. Choate: Same objection.)

A. Not that I saw.

23rd Q. Did he talk and act in a perfectly natural way?

(By Mr. Choate: Same objection.)

A. As far as I could tell; I had never been intimately quainted with him like some of these gentlemen; but I ought he acted just as any other gentleman would under e circumstances. I thought he was perfectly natural.

24th Q. How did he conduct himself in court during the lbemarle County proceedings in 1901?

(By Mr. Choate: Same objection.)

A. With perfect decorum, I thought. He seemed to be rfectly self-possessed and answered all the questions omptly that were put to him. I did not see a thing in the orld that could have been added to his conduct.

25th Q. How far did he live from you?

A. I live about 6 miles from him across the mountain om him.

26th Q. Did his acts, when you saw him after he re-rned to Virginia in 1901, and prior to the Albemarle Coun-, Va., proceedings in 1901, and during those proceedings, hich you have spoken of and described, impress you as tional or irrational?

(By Mr. Choate: Same objection.)

A. Entirely rational.

27th Q. Is there anything further you desire to say in half of the plaintiff, regarding his rational or irrational nduct at any time you knew him?

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(By Mr. Choate: Same objection.)

A. I have never seen him when he acted irrationally under any circumstances.

28th Q. Do you know the general reputation in the community of Mr. John Armstrong Chaloner, for good conduct and sobriety?

(By Mr. Choate: Objected to as incompetent and immaterial.)

A. Yes, sir.

29th Q. You are the sheriff of the county?

A. Yes, sir.

30th Q. What is his reputation for good conduct and sobriety?

(By Mr. Choate: Objected to as calling for hearsay testimony, incompetent and immaterial.)

A. Good.

31st Q. Have you ever known of any complaint against him charging him with any conduct other than good conduct and sobriety?

A. No, sir.

32nd Q. He has never fallen into your hands as an official?

A. No, sir.

33rd Q. You have testified to certain acts and certain conversation which you had with John Armstrong Chaloner prior to 1897, did those acts and that conduct and those conversations impress you as rational or irrational?

(By Mr. Choate: Same objection.)

A. There was nothing about them to suggest anything irrational.

34th Q. The same question I desire to put to you in reference to your conversation with him after his return from New York and his acts, did they impress you in your opinion as rational or irrational?

(By Mr. Choate: Same objection.)

A. Entirely rational.

35th Q. You say you have been in office as sheriff of this county for how many years?

A. Twenty-one.

36th Q. Have you ever handled any insane persons in that time?

(By Mr. Choate: Objected to as immaterial.)

A. Yes, sir.

37th Q. You have had occasion to deal with people of unsound minds by reason of your office of sheriff of this county?

A. I have never had much experience in that line; have had some.

38th Q. State more in detail what your experience has been in that line; have you ever had occasion to accompany an alleged lunatic to the insane asylum?

A. Yes, sir; I have taken several to the asylum, and have had to handle some in the jail.

39th Q. On those occasions have you observed closely the demeanor and acts of the alleged insane person?

(By Mr. Choate: Same objection.)

A. Yes, sir.

40th Q. When you have stated that the acts of Mr. Chalmer were always entirely rational, did you have in your mind the demeanor of those insane persons?

(By Mr. Choate: Same objection.)

A. Yes, sir.

41st Q. When you have stated that the acts of Mr. Chaloner were always entirely rational, did you have in your mind the demeanor of those insane persons?

(By Mr. Choate: Same objection.)

A. Since his coming back from "Bloomingdale," I did.

42nd Q. And you have never seen any act of his, or any conversation that was otherwise than entirely rational?

(By Mr. Choate: Same objection.)

A. Always entirely rational.

And further this deponent saith not.

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PROCEEDINGS OF 1901 BONA FIDE, CORRECT, AND IN FULL FORCE.

Testimony Capt. Micajah Woods, 201, 218.

MICAJAH WOODS, being first cautioned and duly sworn to testify the whole truth, deposes and testifies as follows:

1st Q. By Counsel for Plaintiff: Will you please give your name and age?

A. Micajah Woods, 64 years old.

2nd Q. Where do you reside?

A. In Charlottesville, Va.

3rd Q. What is your profession?

A. Lawyer by profession.

4th Q. How many years have you been practicing law?

A. I came to the Bar in the fall of 1868, 40 years.

5th Q. Have you been continually in the active practice of law since that time?

A. I have, sir.

6th Q. As a lawyer have you any official capacity in the State of Virginia?

A. I have been Commonwealth's Attorney for the County of Albemarle.

7th Q. How long have you been Commonwealth's Attorney for the County of Albemarle?

A. I have been Commonwealth's Attorney of Albemarle County ever since December, 1870.

8th Q. Are you still?

A. Yes; my present term does not expire for three years.

9th Q. Are you an officer of the Virginia Bar also?

A. I am the President of the Virginia State Bar Association for this current year, 1908-'9.

10th Q. In what courts have you practiced and do you now practice?

A. I practice in the Circuit Courts of Virginia, a good many of them; I practice also in the Supreme Court of the State, and also practice in the Federal Court of the State.

11th Q. How long have you known the plaintiff in this case?

A. I think I have known Mr. Chaloner for 12 or 15 years.

12th Q. Did you know him prior to February 13, 1897?

A. I did.

PLAINTIFF'S LETTER OF JULY 3RD, 1897, RECEIVED IN FALL OF 1897.

Testimony Capt. Micajah Woods, 202.

13th Q. Did you receive a letter from the plaintiff in October, 1897?

A. I think that was about the time I received a letter, I don't remember the exact month.

14th Q. How did you get this letter, Capt. Woods?

A. The letter was brought to me by a New York lawyer by the name of Philip, Mr. Philip.

15th Q. Did you know the handwriting of the plaintiff in this case, Mr. John Armstrong Chaloner?

A. Yes, I did.

16th Q. Did you recognize the letter that you received at that time as the handwriting of Mr. John Armstrong Chaloner?

A. My recollection is that the letter was in his handwriting.

17th Q. Do you recognize this as the letter which you received?

(Counsel hands letter to witness.)

A. (Witness examines letter and states:) Yes, that is the letter that I received.

(Counsel for Plaintiff: I now file a letter, dated July 3rd, 1897, and offer the same in evidence in this case, the letter being addressed to the Hon. Micajah Woods, Commonwealth's Attorney, Charlottesville, Albemarle County, Va., and written from the Society of the New York Hospital, White Plains, New York, and signed "John Armstrong Chaloner," with a short postscript, signed "J. A. C." and mark the same "Exhibit K.")

(*Note*—It is stipulated that a copy of the above letter may be attached in place of the original and the original withdrawn; the original, however, to be produced by counsel for the plaintiff upon the trial of this action.)

(The same stipulation is also made as to the other letters offered in evidence.)

18th Q. Capt. Woods, you state that you identify this letter as the letter you received in October, 1897?

A. I do.

19th Q. Brought you by Mr. Philip from Mr. Chaloner?

A. Yes, sir.

20th Q. After receiving this letter from the plaintiff, when and where did you next see him?

A. My recollection is that I next saw Mr. Chaloner in the fall of 1901, probably about the month of September.

21st Q. Where did you see him?

A. In this county and in my office in this city.

22nd Q. Did you represent the plaintiff as attorney in the proceedings inquiring into the sanity of John Armstrong Chaloner, instituted in Albemarle County, Virginia, by C. Ruffin Randolph, on September 20, 1901, which case was decided on November 6, 1901?

A. Yes, and associated with me were the following gentlemen: Senator John W. Daniel and his partner, Mr. Fred Harper, and Mr. Armistead C. Gordon, of Staunton, Va., as attorneys for Mr. John Armstrong Chaloner.

23 Q. Under what procedure and what law did C. Ruffin Randolph file his application against the plaintiff in the Albemarle County, Virginia, proceedings in 1901?

A. The proceeding was instituted in the County Court of Albemarle County, Va., under the provision of Section 1698 of the Code of Virginia of 1887, which read as follows:

"Sec. 1698. When Committee of Residents appointed in other cases.—"If a person residing in this State, is so found, be suspected to be insane the court of the county or corporation of which such person is an inhabitant, shall, on the application of any party interested, proceed to examine into his state of mind, and being satisfied that he is insane, shall appoint a committee of him."

24th Q. Has there been any change in this section since said proceedings were had?

A. No, sir; there has been no amendment of that section.

25th Q. Any change at all?

A. No, sir; no change whatever.

26th Q. Was the County Court of Albemarle County a court of record?

A. It was.

27th Q. Was it the Court of the County of which John Armstrong Chaloner was then an inhabitant?

A. Yes, sir.

28th Q. Under the law and practice of Virginia was this application sufficient and regular in form?

(By Mr. Choate: Objected to as too general.)

Note—It is conceded that the witness is qualified as an expert to testify and no objection is raised on that ground.)

A. We gentlemen who represented Mr. Chaloner in that proceeding as attorneys considered it a regular and proper proceeding under that statute.

29th Q. And do you now consider that it was regular and sufficient?

A. I do.

30th Q. Did the plaintiff, John Armstrong Chaloner, appear in the Albemarle County, Va., proceedings in 1901 in person?

A. He appeared in person and was examined by the Court.

31st Q. In the answer filed by the defendant in this case it is said that these Albemarle County, Virginia, proceedings of 1901 should be vacated and set aside for the reason that the petition was not sworn to, or otherwise verified, what have you to say about this?

A. There is nothing in the statute under which the proceeding was instituted that required the petition to be sworn to.

32nd Q. Is there any provision or any law in Virginia which would require that this should be sworn to?

A. Not that I know of in a proceeding of that character.

33rd Q. In the same answer, it is said that these Albemarle County, Virginia, proceedings should be vacated and set aside because the said petition or application of Carey Ruffin Randolph was not presented to the County Court of Albemarle County, but it was presented to the Honorable John M. White, Judge of said Court; what have you to say about this?

A. The petition in the case referred to was addressed to the judge of the court, as is the practice and custom in Virginia, in a proceeding of an equitable character. In my long experience as a practicing attorney in the courts of this State I do not recall that any bill in chancery or any petition in an equitable proceeding was addressed otherwise than to the Judge of the Court. There is a distinction in Virginia, which still holds, between the equitable and the legal jurisdiction of our courts, and in an equitable proceeding, that is, suits in chancery, petitions of an equitable character, the practice is uniform and unbroken so far as I know, for all the proceedings to be addressed to the Judge of the Court.

34th Q. Are Minor's Institutes, Barton's Chancery Practice and Sands' Suits in Equity considered legal authorities in Virginia?

A. They are considered legal authorities and the forms that are given in all of said works show that the custom and practice in Virginia is to address the pleadings to the Judge of the Court.

35th Q. What was the object of the proceedings instituted by Carey Ruffin Randolph in Albemarle County, Va., on September 20, 1901?

(By Mr. Choate: I object to that as calling for the contents of a writing.)

A. The petition, according to my recollection, shows upon its face the object of the petition, namely, to ascertain by an investigation whether a committee should be appointed to take charge of Mr. Chaloner's estate.

36th Q. Did C. Ruffin Randolph in person sign the petition or application filed in Albemarle County, Virginia, on September 20, 1901, asking the Court to examine into the state of mind of John Armstrong Chaloner and determine whether a committee of his person and estate should be appointed?

A. My recollection is that he did.

37th Q. Did C. Ruffin Randolph, who filed the application or petition in this proceeding, have such an interest in the matter as is required by Section 1698 of the Code of Virginia?

A. Mr. Randolph was a resident of this State, owned property in the neighborhood of Mr. Chaloner, resided near and was a neighbor of Mr. Chaloner's and, of course, was interested as such in the question as to whether he was sane or insane.

38th Q. In your opinion did he have an interest in the matter such as to meet the requirements of Section 1698 of the Code of Virginia?

A. It was the opinion of the attorneys associated with me and my opinion that Mr. Randolph was so interested as to justify him in filing the application which was made to the Court.

39th Q. And also is it now your opinion that he had such an interest in the matter?

A. Yes, sir.

40th Q. At the hearing of this case, on November 6th, 1901, in the County Court of Albemarle County, Va., was C. Ruffin Randolph present in said court in person as petitioner in said proceedings?

A. Yes, he was.

41st Q. Was this proceeding instituted and conducted and prosecuted in good faith, with a bone fide intent and purpose to have the Court examine into the state of mind of John Armstrong Chaloner and determine whether a committee of his person and estate should be appointed?

(By Mr. Choate: I object to that as leading and calling for the conclusion of the witness as to the state of mind of the said petitioner who brought the proceeding, and also as incompetent.)

A. It was.

42nd Q. Were the said Albemarle County, Va., proceedings *ex parte*?

A. Well, sir, the petition was filed by Mr. C. Ruffin Randolph, a citizen of the State and a resident of the county of Albemarle, Va., and Mr. Chaloner was notified of it, and appeared with the witness before the Court so far as the requirements of the statute were concerned, Mr. Randolph represented the people of the State and of the county, and Mr. Chaloner his own interests, and they were regarded as the only necessary parties.

43rd Q. Was there evidence introduced in said Albemarle County, Virginia, proceedings competent and sufficient under the Virginia law to justify the decree that was entered on November 6th, 1901?

A. The case was heard by Judge John M. White, who was then Judge of Albemarle County Court, and now is Judge of the Circuit Court of Albemarle County. He is regarded as one of the soundest and best judges in the State, and after hearing the testimony his decision was that there was no occasion for the appointment of a committee of the person or estate of Mr. Chaloner, and the petition was dismissed.

44th Q. In your opinion was the evidence competent and sufficient under the Virginia laws to justify the decree that was entered?

A. It was.

45th Q. In your opinion did the County Court of Albemarle County have jurisdiction both of the subject matter and the parties?

(By Mr. Choate: Objected to as calling for a conclusion.)

A. In my opinion it had jurisdiction.

46th Q. It is also alleged in said answer filed in this present case, that no process or notice of said Albemarle County, Virginia, proceedings at any stage thereof was ever issued or served, and no such process or notice was ever served upon the said plaintiff, John Armstrong Chaloner, or upon

Prescott Hall Butler, who it alleges was then a citizen of New York, and of the city and county of New York, either individually, or as committee of the person and property of the plaintiff, John Armstrong Chaloner, or upon this defendant, meaning Thomas T. Sherman, either individually or as committee of the person and property of the said plaintiff, meaning John Armstrong Chaloner, or upon any of the heirs-at-law or next of kin of the said John Armstrong Chaloner, and that no heirs-at-law or next of kin of the said John Armstrong Chaloner, and neither the said Prescott Hall Butler, nor the defendant, Thomas T. Sherman, ever appeared in said proceedings, either individually or as committee as aforesaid, in person, or by attorney or counsel; what have you to say about this?

A. Under the statute under which this proceeding was instituted there is no provision and was no provision for giving notice to any person, except the party suspected of being insane, and in investigations under the section of the statute which I have recited and under investigations before justices touching the sanity of a person, there is no law requiring notice to be given to the next of kin or the parties holding the estate of the party suspected, or any part thereof.

47th Q. Under the law in Virginia then it is not necessary to give notice to any one except the alleged incompetent person, is that the effect of your answer?

A. Yes, sir.

48th Q. In this case, in your opinion, is it material whether notice was given to the plaintiff, John Armstrong Chaloner, or not, since he appeared in Court at the hearing in the Albemarle County proceedings in person and by attorney on the date of the hearing of the matters at issue?

A. It is not material. I will add that his appearance in court was evidence of the fact that he had notice.

49th Q. And was or not that sufficient?

A. That was sufficient.

50th Q. Was the order or decree entered in the Albemarle County, Virginia, proceedings on November 6th, 1901,

inquiring into the sanity of John Armstrong Chaloner a final order or decree on the merits of the issue then and there in controversy?

A. I now so regard it.

51st Q. Do you now so regard it?

A. I now so regard it.

52nd Q. Has said order or decree since been appealed from, annulled, set aside, vacated, reversed, or in any particular modified or changed?

A. Not that I have ever heard of, and I would have known of any such appeal, modification or change.

53rd Q. Is said order or decree still in full force and effect as rendered?

A. It is.

PROCEEDINGS OF 1901 POSTPONED AT REQUEST OF REPRESENTATIVE OF OTHER SIDE.

Testimony Capt. Micajah Woods, 213-218.

54th Q. As I understand, the said Albemarle County, Virginia, proceedings were instituted on the 20th day of September, 1901; was there any continuance at the request of any one representing John Armstrong Chaloner's relatives, or his then alleged committee?

(By Mr. Choate: I object to that as leading, as calling for the conclusion of the witness on a matter of fact.)

A. My recollection is that a member of this bar, Mr. John B. Moon, who was then thought to represent the New York Committee of Mr. Chaloner, requested that the matter of the investigation might be laid over and not gone into at the October Court.

55th Q. What did Mr. Moon say to you when he called on you at the time you have just referred to?

(By Mr. Choate: I object to that as calling for hearsay and as immaterial.)

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A. I do not remember exactly what Mr. Moon said. My recollection is that he told me in general terms that he had been approached in some way by the New York Committee to look after these proceedings in Virginia, and that he wished time to confer with the Committee. I don't remember that he told me distinctly that he had been engaged as counsel, but as a matter of courtesy to Mr. Moon the investigation was laid over for a month.

56th Q. When Mr. Moon called to see you with reference to this continuance whom did he purport to represent, if any one?

(By Mr. Choate: I object to that as calling for a conclusion and as leading.)

A. My recollection is not distinct as to the parties or party that Mr. Moon represented according to his statement. I got the impression from what he said that he had been requested by the New York Committee to watch the proceedings in Virginia in behalf of the Committee and in behalf of Mr. Chaloner's family.

57th Q. Who is Mr. John B. Moon?

A. He is an attorney-at-law in this city.

58th Q. Was he an attorney-at-law and practicing attorney at that time?

A. He was.

59th Q. In what capacity was he representing the Committee or the members of Mr. Chaloner's family, if at all?

(By Mr. Choate: I object to that as calling for a conclusion, also as incompetent, the witness having said that he did not remember anything clearly more than he stated.)

A. I don't remember to what extent he said he represented these parties; I could not state after this lapse of time whether Mr. Moon stated to me specifically how or to what extent he represented the parties above referred to. His state-

ments to me led me to believe that in a general way he was requested to look after the Virginia proceedings in behalf of the New York Committee and Mr. Chaloner's family, but to what extent or how employed, I do not know and did not know then.

60th Q. Do you recognize this as your handwriting and the envelope in which you returned the letter you identified in the first part of your testimony as the letter you received from Mr. Chaloner in October, 1897?

(Counsel hands envelope to the witness, who examines it.)

A. The address on this envelope is certainly in my handwriting, but I cannot say with absolute certainty what I may have sent in this envelope.

(Counsel for Plaintiff: I now file this envelope and offer the same in evidence in this case, marked "Plaintiff's Exhibit M.")

By Counsel for Plaintiff: We offer in evidence what purports to be a certified and exemplified copy of the petition of Cary Ruffin Randolph, Petitioner, against John Armstrong Chaloner, Respondent, submitted to the County Court of Albemarle County, Virginia, to the Honorable John M. White, Judge of said Court, and the proceedings annexed thereto and testimony of witnesses sworn and examined under the examination conducted under said petition and purporting to be a complete record of the examination taken on that occasion.

61st Q. Captain Woods, is that a true copy of the petition of Mr. C. Ruffin Randolph and of which you have been speaking here in your testimony?

(By Mr. Choate: I concede that it is a true copy of the petition.)

62nd Q. Is this proceeding here shown, and marked "Plaintiff's Exhibit L," the proceeding in Albemarle County, Virginia, in 1901, in the month of November, concerning which you have just testified?

Note—It is conceded on the record that it is.

63rd Q. I read you, Mr. Woods, a statement which appears on the record to have been made by you as follows:

> "Hon. Micajah Woods made the following statement to the court: I desire to present to the Court, with a view of their qualification, my two friends, the Hon. Armistead C. Gordon and Mr. Frederick Harper. He then further stated: We desire to present to the Court the following petition, Exhibit (A). Your Honor is aware that this petition was prepared and it was expected that it would be filed at the last term of the Court, but owing to suggestions made, and especially the suggestion made by Counsel for Committee of Mr. Chaloner, the petition was not filed at the last Court, but it was understood that it would be heard today, and we are here to-day to have the matter investigated * * *"

To whom did you refer when you used the expression "Counsel for Committee of Mr. Chaloner?"

(By Mr. Choate: I object to this on the ground that this is cross-examination of the plaintiff's own witness and as leading.)

A. I refer to Mr. John B. Moon.

64th Q. After refreshing your recollection by reading this extract, are you now prepared to say whether at that time you considered Mr. John B. Moon counsel for the Committee of Mr. Chaloner in New York?

(By Mr. Choate: I object to that as calling for the conclusion of the witness on a matter of fact; also as leading.)

A. My recollection is that in deference to the request made by Mr. Moon no proceedings were had at the October Court, 1901. I do not know whether Mr. Moon was counsel for the New York Committee, or for Mr. Chaloner's family when the case was called in November, 1901, for investigation.

65th Q. You treated him as such, did you not, in granting the adjournment?

(By Mr. Choate: I object to that as immaterial and as leading.)

A. It is proper to state that Mr. Moon did not take part as counsel for any one in the investigation before the County Court in November, 1901, and I do not know whether he was then employed as counsel or not.

CROSS-EXAMINATION.

1st Q. By Counsel for Defendant: No notice was in fact given the then plaintiff of the pendency of the Albemarle County proceedings in 1901 was there?

A. So far as I know none was.

2nd Q. And no representative of the Committee appeared upon the hearing of the case in November, 1901?

A. No, sir.

And further this deponent saith not.

JOHN ARMSTRONG CHALONER, being first cautioned and duly sworn to testify the whole truth, deposes and testifies as follows:

1st Q. By Counsel for Plaintiff: What is your name and age?

A. John Armstrong Chaloner, born the 10th day of October, 1862.

2nd Q. Are you the plaintiff in this case?

A. I am.

3rd Q. Have you always gone by the name of John Armstrong Chaloner?

A. I have not.

4th Q. What was your name at the commencement of this action?

CHANLER CORRUPTED FORM OF CHALONER.

A. John Armstrong Chanler—Chanler being the corrupted form of the name Chaloner.

5th Q. What was your residence at the commencement of this action in 1904?

PLAINTIFF'S PRESENT RESIDENCE, ROANOKE RAPIDS, NORTH CAROLINA, 219-231.

A. "The Merry Mills," Cobham, Albemarle County, Va. I afterwards transferred my residence, with a voter's certificate, to Roanoke Rapids, Halifax County, North Carolina—(the town owned by the Roanoke Rapids Power Company, of which I owned the largest stock, and spent about fourteen or fifteen months in building, and when built I left.

(Counsel for Plaintiff: I offer in evidence and file the certificate that John Armstrong Chanler was a registered and qualified voter in Albemarle County, Va., in October, 1902, dated July 11th, 1905, and signed by Frederick K. Page, which is marked "Plaintiff's Exhibit C." I also offer in evidence and file a letter addressed to Mr. John Armstrong Chanler, dated July 13, 1905, signed by H. G. Mahanes, Registrar, Lindsay's Precinct, stating that said registrar had that day erased from his registration book the name of John Armstrong Chanler, and made the following entry under the heading, "If transferred, when and to what precinct." "Roanoke Rapids, N. C., July 13th, 1905," and ask that it be marked "Plaintiff's Exhibit D.")

6th Q. What is your occupation or profession?

A. Law writer and publicist; I might add lawyer, (I pre-suppose that when I say law writer) Member of the New York Bar, law writer and publicist.

7th Q. What books have you written other than law books?

A. I have written a publicist's book, entitled "Four Years Behind the Bars of Bloomingdale, or the Bankruptcy of Law in New York."

8th Q. What law books have you written?

A. "Chaloner on Lunacy, or the Lunacy Law of the World," also a book, which is a satire, and is entitled "Scorpio." It is in verse. I also desire to file at the proper time two letters to newspapers—one in England, the other in Richmond, Va. I also desire to file as proof that these lines, which are in the form of sonnets (the Shakspearian form of sonnet) that these sonnets as sonnets are worthy of that name, and are not bogus sonnets, or anything other than sonnets, regular both in metre and form; I desire to file also a copy of a London purely literary weekly newspaper which gave these said sonnets (which have never been sent to any newspaper in the United States) which gives high praise to the said sonnets and their author. That has been kept an entire secret from the press.

9th Q. In what State do you claim your citizenship at the present time?

A. Roanoke Rapids, North Carolina.

10th Q. For how long have you been a citizen of North Carolina?

A. Since July 13th, 1905.

11th Q. Have you any business interests in North Carolina?

A. I have large business interests there.

12th Q. What were the names of your parents?

A. My father's name was John Winthrop Chanler, my mother's name, Margaret Astor Ward.

13th Q. How long after your birth did your mother and father live?

A. As I remember, my mother died about 1874, and my father about the latter part of 1877.

14th Q. In what profession was your father engaged during your boyhood?

A. He was a member of Congress for three consecutive terms immediately succeeding the Civil War.

15th Q. What was your father's profession?

A. A lawyer, but I never heard of his practicing, except so far as was necessary to look after his property.

16th Q. What were the names of your brothers and sisters?

A. Winthrop Astor Chanler, Emily Astor Chanler (who died in childhood), Elipabeth Chanler, William Astor Chanler, Marion Ward Chanler (deceased in childhood), Margaret Livingstone Chanler, Lewis Stuyvesant Chanler, Robert Winthrop Chanler, Alida Beekman Chanler, and finally Egerton White Chanler, deceased in childhood.

17th Q. Where did you receive your preliminary education?

PLAINTIFF'S PLACES OF EDUCATION, 222-227.

A. At a girls' school in Washington, D. C.

18th Q. Any other place beside this?

A. After I was too old to be allowed to run with the ladies I was transferred to the hands of a tutor, a very extraordinarily well educated man, Mr. William H. Wilson, who had educated, as I remember, my mother and several others, I think, of the Astor blood, and who, after educating me in the broadest possible way, ended his years as a curator or something of the sort, in the Astor library.

19th Q. Where did you go after this?

A. I went to St. John's Military Academy. It was an Episcopal institute, at Ossing-on-Hudson, then called Sing Sing.

20th Q. After leaving this place where did you then enter school?

A. My father in 1877, after I had spent four years at this military school, and if I may be permitted to say so without conceit, simply to show where my line lies, I received, the last year I was there, the highest prize in that school, out of seventy-five boys, for progress made in declam. ion (that does not mean that I was the best declaimer, but that I had a strong bent in that line.) In 1877 my father took me and my brother, Winthrop Astor Chanler from said school, and with us a sister, Elizabeth Winthrop Chanler, to Europe. We sailed, I think, in March, 1877, on a Cunard boat, the name of which escapes me. It was a long voyage, took us thirteen days; I remember that because we have such swift voyages now. My father's plans had been to put me, with Mr. Winthrop Astor Chanler, at Eton, a school founded by one of the kings of England, named Henry, near Windsor, but I was over age; that is to say, there was a time limit at which anybody could be entered, and that limit was, if I remember rightly, thirteen. My father thereupon at once decided to place me at Rugby—the old Rugby of Tom Brown's School Days. I presented myself there under my father's desire, and the result was that I was beaten at my examination. I then under my father's wish entered a preparatory school, called "Hill Brow," on the outskirts of the city of Rugby. I entered there the spring term, about March or April, the Easter term. I spent there two terms. There are three terms in a year in English schools. I then spent four terms at Rugby. At Rugby the regulations concerning sports are excessively strict; by which I mean exercise,—athletic,—at Rugby and all English schools is as important a part of the tuition as English, Latin, Mathematics or Greek. The result was I received an exceedingly athletic education, because athletics were compulsory. The terms were divided up into different sports—the October term was given up entirely to the ancient form of football, from which I get my more or less athletic bent. I was forced to it—would have been kicked off the common by the 450 boys there if I had not. There was no choice. It was hard work. I was placed as full-back of my house.

21st Q. Subsequently did you go to Columbia?

A. Yes, but not immediately. I left there in the early summer of 1879, about June, and spent one year until on or about June, 1880, with a tutor on the outskirts of Newport, Rhode Island, at a house about one mile from a place called "One Mile Corner." This tutor's name was William C. Simmons, and he had formerly been a professor in a New England College, but had left there, and preferred to take on the "gilded youth," and took nobody but the sons of rich men. I spent a summer, 1879, and winter (1879-1880) under his tuition and in the fall, October (1879), passed a portion of the examination of the entering term at Columbia. I then worked eight months more in preparation and the following June I was admitted without conditions at Columbia, contrary to the expectations of my entire family, who had prophesied horrible destruction and defeat for me, and Mrs. Henry White, my first cousin, the wife of the present United States Ambassador in Paris, in October, said in October, 1879 while on a visit to the United States about two months before the examination in the spring, said to me: "Archie, what a pity it is you have not as much brains as Winty; you are sure to be beaten; I am sorry for you."

22nd Q. How long did you stay at Columbia?

A. I stayed there in the undergraduate department three years in the school of arts, and one year in the post-graduate department of the school of arts, altogether four years. The reason that I only spent three years instead of four to get my B. A. was that I had received a wound in the knee at the hands of Mr. Winhrop Astor Chanler, which wound damaged me for some years, and made me that summer so absolutely an invalid that my two guardians, Messrs. John Jacob Astor, now deceased, and Lewis Ruthfurd Stuyvesant (now deceased) were "willing to pay the shot" out of my funds.

23rd Q. You mean the fare?

A. Yes; and all that summer I drove in a hack. Why did I drive that summer—for two reasons, first, because I

felt that I had better put that time in working, and, second, I tried to skip a class, because I had been told by one or two members of my family that I could not do it. Skipping a class is considered, or was at that time, a very difficult thing to do.

24th Q. You succeeded in doing that?

A. Yes.

25th Q. Then you took up the study of law at Columbia?

A. Before taking up the study of law, I spent one year preparing for my Master of Arts degree in the post-graduate department of Columbia University.

26th Q. Did your brother, Winthrop Astor Chanler enter Columbia with you?

A. No.

27th Q. Did you take a law course?

A. I entered the Columbia Law School for the main object of getting the profound learning of Professor Dwight, but as I knew that life was short, I thought that I would spend my time elsewhere than keeping the tremendously strict tab they kept on cutting at the law school; so I also studied law elsewhere; entered as a law student in a certain law office in New York City, admitted to the bar in June, 1885, at the hands of Justice Barnard, of Poughkeepsie, I having a residence up there at the time, at the old Chanler homestead, "Rokeby" on the Hudson.

28th Q. After you were admitted to the Bar, what did you do?

PLAINTIFF'S TRAVELS, 227.

A. After I was admitted to the Bar I travelled extensively. Having previously been in every State and Territory in the Union west of the Mississippi, I therefore joined a party of several gentlemen and travelled through Mexico and then sailed on a steamer through the West Indies and all along the coast of South America, then going to Colombia, sailing into that harbor and landing at Cartagena. The

party broke up there and they all sailed to Europe. I crossed the Isthmus of Panama, and then sailed down the west coast of South America to the port of Ecuador, Guayaquil. I then made a journey from Guayaquil to Quito, first, by means of going up the river on a flat-bottom steamer, with paddle behind, as I remember it; second, taking a canoe paddled by native Indians, and, third, over the Andes on mule back past the foot of Mt. Chimborazo, then by stage coach to Quito. After spending some weeks there, I then sailed from Colon, Panama, via New York, as well as I remember, to France; it may have been England, but at all events, Europe, and spent the first winter there. The winter of 1886 and 1887 I spent with Mr. Arthur Astor Carey in a large atelier, the French word for studio. He had several artists—American painters—stopping with him free gratis. I, of course, paid my board. This house was on the Rue d'Assas, opposite the Luxembourg Gardens. While there I spent my entire time during that winter in attempting to find out what a picture meant, by which I mean how to tell whether a picture was a good picture and be able to give my reasons, and the same way, to a less extent, with statuary. In other words, I spent my days in various ateliers and visited the Louvre Art Gallery and cultivated myself in art, on the same lines that my father, I understood, had done after he had graduated from Heidelberg.

29th Q. Do you remember what year that was that you were in Paris?

A. 1886 and 1887. After my father graduated at Heidelberg he perfected himself in the study of art, so that he could collect an art gallery, which he did.

30th Q. You were endeavoring to do likewise in Paris?

A. Yes.

31st Q. Who is Arthur Astor Carey?

A. My first cousin once removed.

32nd Q. What, if any, experience, did you have with Arthur Astor Carey at the time you have just mentioned in Paris?

A. I had at first an extremely pleasant experience, then a period of doubt, followed by a period of "get out of his house"; not that he kicked me out, but that he and I became on such disagreeable terms that I got out. The reason that this unusual state of affairs occurred was that I was several years younger than Mr. Carey; he knew infinitely more about art than I did, and I being somewhat of an idealist, that is to say, I like to think as high of a man as I can—I being merely a college graduate, totally ignorant of mankind—made an idol so to speak (please understand that this is symbolic not with a mallet and chisel)—I made metaphorically speaking, an idol of him.

34th Q. Subsequently you had a disagreement with him?

A. Yes; the period of doubt was whether this idol's feet were not of very muddy clay. That took me months of consideration and heart burnings, because I used to be very fond of him; but I was forced at the end of some months to find that his feet were of mud. I then departed and hired a home of my own.

35th Q. Is this the same Arthur Astor Carey who signed a petition to the Court of New York to commit you to "Bloomingdale Asylum"?

A. Identically the same. I then hired a house, after leaving the abode of Mr. Carey. I then hired a small house in the Rue d'Umont d'Urville. I rented that house for at least a year. Immediately before returning to this country I went out to the home of Monet, the French Impressionist painter, at Jiverney Normandy, the modern father of what is known among artists as Impressionism. After spending a week or so in an old Norman house with these artists, whom I had met in Paris, I then sailed for New York. That time I was there, when I was at the house village of Monet, the artist, must have been about July, for I bought my ticket and sailed, with the calculation of reaching Newport in the height of the season. I went to Newport in August, 1887, and hired a house to open bachelor quarters, with two friends of mine, mem-

bers of the Knickerbocker Club, of which I was at that time also a member.

36th Q. When did you meet your former wife?

A. A few days after that.

37th Q. Where?

A. At a ball at "The Casino." I was lounging with a lot of other men in the broad doorway of "The Casino" and saw her and that night procured an introduction.

38th Q. When were you married?

A. On the 14th of June, 1888.

REASON WHY ONLY ONE MEMBER OF CHANLER FAMILY INVITED TO PLAINTIFF'S WEDDING, 230-231.

39th Q. At the time of your wedding to Amelie Rives were the members of your family invited to attend?

A. Only one. With one exception, none of them were invited.

40th Q. Why were none of the other members of your family invited to the wedding?

(By Mr. Choate: I object to that as incompetent, immaterial, and as leading.)

A. Because the present Princess Troubetzkoy, to whom I was about to be married, objected to inviting more than one, the said one member of my family being one of my sisters; because Winthrop Astor Chanler had had the rather remarkable taste to send me a copy of "The Quick or the Dead," a work of my then fiance, with distinctly non-flattering marginal comments. I felt, as I think any man who is worthy the name of man, and who then happened to be in love, would feel, and I notified the present Princess Troubetzkoy of what Mr. Winthrop Astor Chanler had been guilty, and considered with her about advisability of inviting any of the other members of the family, bar one, because I had not liked the curiosity—the manly curiosity—I think men are just as

curious as women—of Mr. Winthrop Astor Chanler, who quietly drove in at "Castle Hill," in the winter of 1888, and invited themselves, so to speak, to "Castle Hill," the home of the present Princess Troubetskoy. I thought that was too much curiosity, and therefore all the members of the Chanler family had better be cut out, and the present Princess Troubetzkoy agreed with me, with the exception of one sister, with whom I was then on fairly good terms. She received an invitation.

PLAINTIFF'S DIVORCE, 237.

I had bought a house, "The Merry Mills," at Cobham, Virginia, in the early spring of 1894, just about the time I gave up my residence in New York. I was there from 1892 to 1894. In 1894 I went South, and spent most of the time at "Castle Hill" and then bought "The Merry Mills" in the spring of 1894, and in the late summer of 1894 went to Europe.

I say late summer, I was only there about six weeks, started about the first of July and got back in August, six weeks in all, on a business trip. Then in 1895—well, prior to that, the present Princess Troubetzkoy and myself had agreed to disagree, and to that end and to keep up appearances, I was living partly at "Castle Hill"; but the decision for divorce was taken before that time, that is, the year 1894, and she took the first step by going to Los Angeles on Friday, February fifteenth, 1895 (I remember that on account of the alliteration of the name, the number of times the letter F occurs in the date.)

PLAINTIFF NEVER CONVICTED OF A MISDEMEANOR, 245-246.

68th Q. Have you ever been convicted of a crime or misdemeanor?

A. Never.

69th Q. Have you ever been arrested in your life?

A. No.

LETTERS FROM THE CHANLER FAMILY TO PLAINTIFF AT THE TIME OF HIS MARRIAGE, JUNE 14, 1888, SHOWING ILL FEELING BECAUSE NOT INCLUDED IN LIST OF WEDDING GUESTS, pp. 243-254.

70th Q. At the time of your marriage to Amelie Rives were your relations to your brothers and sisters cordial?

A. Between all my brothers and myself there was always a certain amount of friction, as I referred to that blow I got from my brother, which laid me up for a year—I could not walk for a year. There has been feeling, but I was known as a peace-maker (the person who made that statement is on the other side). The newspapers say we have strong individualities—it must be so. It happened that the seven children in our family mapped out their course in different ways. A certain division of the family did not speak to me, and others did. A most unfortunate condition. I simply say it was a difference of temperament.

71st Q. Was there any sign of the development of the unfriendly feeling between you and the members of your family?

A. When?

72nd Q. Prior to your incarceration in the "Bloomingdale" Asylum?

(By Mr. Choate: I object to that as leading.)

A. Yes.

73rd Q. What development, if any, was there in such feeling?

A. When they were children, and I, so to speak, a father to them, I being at Columbia University, and going up home every two weeks, and Winthrop Astor Chanler being a student at Harvard, and that meaning that we were hundreds of miles apart, and he being the gentleman whom I was always more or less falling out with—Mr. Winthrop Astor Chanler was the man that gave me the wound in the back that I have

mentioned before—when he was away everything was lovely at "Rokeby". I sold out my share in that place, or rather gave my share to my sisters.

74th Q. What was the amount of your share?

A. $20,000, or something like that—in the neighborhood. I was on good terms with all of them, bar Winthrop Astor Chanler, and with him at times when he would not be disagreeable, because I was really fond of him and wanted him to like me, but could not get him to do so—our natures were too totally different and antagonistic. No breaches had occurred with the other members of the family, barring Winthrop Astor Chanler, until just before the time of my marriage, and then a breach began with all of them, which I will show on the record.

75th Q. You referred to that yesterday?

A. Yes, but there was peace and quietude and more or less loving conditions between all of my brothers and sisters and myself, but one, until just before the time of my marriage.

76th Q. Did you receive a letter from Winthrop Astor Chanler immediately after your marriage, about June 21st, 1888?

A. I did.

77th Q. Is this the letter you received from him: do you identify this as the letter you received from him?

(Counsel hands letter to witness).

A. Yes.

(Counsel for Plaintiff: I file here with these depositions a letter dated June 21st, 1888, signed "W" and ask that the same be made a part of this testimony, marked "Plaintiff's Exhibit F".)

78th Q. The signature to that letter is "W", who is that person?

A. That was the usual form which Mr. Winthrop Astor Chanler signed his name when writing to me.

79th Q. Do you recognize the handwriting as the handwriting of your brother, Withrop Astor Chanler?

A. I do absolutely.

80th Q. Did you reply to this letter?

A. I did.

81st Q. Is this a copy of your reply to that letter?

(Counsel hands paper to witness.)

A. It is. Here is an "O. K.." of this being a true copy of the letter having been sent to Winthrop Chanler, "Rokeby," Barrytown, New York.

(Counsel for Plaintiff: I now file a letter headed "Castle Hill", Albemarle County, Va., dated June 27, 1888, and signed "J. A. C.", and ask that the same be made a part of the evidence in this case, and marked "Plaintiff's Exhibit G.")

(By Mr. Choate: I object to this copy as secondary evidence, offered without sufficient foundation.)

82nd Q. When did you make the copy of this letter?

A. That was made at the time it was sent.

83rd Q. Is this an exact copy of the letter you sent.

A. Word for word, yes.

84th Q. Have you the original of which this is a copy?

A. No, Miss Margaret Livingston Chanler being present at "Castle Hill", the only member of the family there, signed that as a witness thereto, at my request.

85th Q. What did you do with the original?

A. The original was mailed to Winthrop Astor Chanler.

86th Q. Have you seen it since.

A. I have not.

87th Q. Did you receive a letter from Mrs. Winthrop Astor Chanler about June 25th, 1888?

A. I did.

88th Q. Is this the original letter you receivel from Mrs. Winthrop Astor Chanler?

(Counsel hands letter to witness.)

A. It is.

(Counsel for Plaintiff: I now file as Plaintiff's Exhibit H", a letter dated June 25th, 1888, written from "Rokeby", Barrytown, N. Y., and signed "Daisy", and ask that same be be made a part of the evidence in this case.)

89th Q. Who is the person "Daisy" who signed that letter?

A. She is Mrs. Margaret Terry Chanler.

90th Q. Is she Mrs. Winthrop Astor Chanler?

A. She is.

91st Q. Do you recognize the handwriting as that of Mrs. Winthrop Astor Chanler?

A. Yes, I do.

92nd Q. Did you on or about June 19th, 1888, and June 22, 1888, see two letters written by Mr. Winthrop Astor Chanler to his sister Margaret?

A. Yes.

93rd Q. Who showed you these letters?

A. Miss Margaret Livingston Chanler.

94th Q. Are these letters the letters which are refrred to in the letter to you from Winthrop Astor Chanler, already filed in this case as "Exhibit G"?

A. Yes, sir.

95th Q. Do you recognize these letters as being the two letters you have just mentioned? (Counsel hands letters to witness for examination.)

A. Yes, sir.

(Counsel for Plaintiff: I now file the letter dated June 19th, written from "Rokeby", Barrytown, N. Y., and signed

"W" and marked "Plaintiff's Exhibit I", and ask that the same be made a part of the evidence in this case: I also file the letter dated June 22nd, '88, written from "Rokeby", Barrytown, N. Y., and marked "Plaintiff's Exhibit J", and ask that the same be made a part of the evidence in this case.)

96th Q. These two letters are signed "W", who is the person signed these two letters?

A. Winthrop Astor Chanler; they are in his handwriting.

97th Q. They are addressed to "My Dear Margaret", who is that person?

A. Margaret Livingston Chanler aforesaid.

98th Q. To whom does the word "Brog" used in these letters refer?

A. My humble self.

99th Q. Were the relations between your brother Winthrop Astor Chanler and yourself cordial after the time you replied to these letters?

A. My memory is refreshed now. I remember that I carried that reply to Mr. Winthrop Astor Chanler's letter to me in my pocket, and instead of mailing it to him, I carried it in my pocket to present to him personally. I went to New York and met my brother at the steps of Mr. Rutherford Stuyvesant's house. I presented the letter to him; he read it and apologized. In other words, I reconsidered mailing the letter to him and kept it in my pocket, to present to him personally, for the reason that I thought it was softer for a man to get a letter like that personally and immediately follow it up by a handshake, than to get it by mail. The whole thing was wiped out almost completely by the hand-shake. We met on the steps, then we went in, and resumed the cordiality we had before that letter was written to a great extent. That letter says, as I remember it, "I will have no further communication with you personally or by letter until I receive a written apology from you." I thought it less degrading to a man to give a spoken apology than a written one. I trusted to chance to meet him, knowing he was in New York, and at

Mr. Rutherford Stuyvesant's, and I met him by chance on the step of Mr. Stuyvesant's house, handed him the letter, and he made an apology, and I slapped him on the back and said "That is all right." I did not wish to embitter him any more than he was before that letter was written.

100th Q. What were your relations with the members of your family from the year you were married until 1896?

A. It was almost you might say a "freeze out," getting more and more distant. After that there was a violent (I am not speaking in the alienistic sense of that word, Mr. Choate—I mean in the ordinary sense)—there was a violent outburst of anger upon the part of the entire Chanler family, as expressed by these letters, the one sent by Mr. Winthrop Astor Chanler, and the one from his wife—they were words to this effect——

(By Mr. Choate: I must object to the witness stating the contents of the letter; the answer is not responsive, because the question calls for the time after the marriage.)

101st Q. What were your relations with the members of your family prior to your marriage in 1888?

A. Excellent, with this exception, as I say their characteristics were different from mine. They were Northern and I was Southern. We have two strains in our family, equally strong; one came from Charleston, South Carolina, from which strain I drew my blood, according to my temperament, the other from Boston, Massachusetts, and apparently in our family the mixture did not blend, and this undercurrent of hot blood and cold blood led to precisely what led to the strife between the Northern and Southern States. These characteristics gradually developed, and as they did I began to notice that there was a cold streak running clear through all the family but myself, and that my streak of hot blood seemed to show up at times. I am speaking now of the friendly members, the most friendly members; that coldness, as I say, kept increasing, and was ready to lead, on my part, so to speak,

to a secession. I am simply using this to show that sometimes people of such different temperaments and characteristics cannot stay together; and I, after the rows, which will be described, which began after my marriage, with my family—finally after the rows (No other word for it), which will be described and which struck to a business level and there developed so powerfully that it led to my not speaking to Mr. Winthrop Astor Chanler, as will all be brought out on indisputable evidence when the time comes.

* * * * * * * *

PLAINTIFF'S FIRST MEETING WITH AND SUBSEQUENT QUARREL WITH STANFORD WHITE.

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131st Q. When did you first meet Stanford White?

A. At a junket, a society entertainment, made up mostly of society people, so-called "400", and several leading physicians. The physicians had obtained stock in a mineral springs at a hotel called "The Four Seasons", built at Cumberland Gap, at the intersection of Tennessee, Kentucky and Virginia. The idea of this junket was to introduce the place to the "400" and also for the leading physicians to give this water to patients to drink. It was to advertise this part of it. I then got acquainted with Stanford White and became very fond of him.

132nd Q. What year was that.

A. 1892, almost the same time I opened a law office.

133rd Q. Where were you on the 13th day of February, 1897?

A. Up to 4 o'clock I was at—February, 1897, the 13th day. There are two thirteenth days in my mind. I mean the 13th day of February I was at the Hotel Kensington—no—you see this is a new date, which has just come up, and was only brought up and discussed in yesterday's testimony, brought up from the books of A. D. Payne. I never knew the day; I always thought it was the third of February—I had no idea of the date of my departure for New York from "The Merry Mills". I kept no books.

134th Q. Where were you on the morning of February 13th, 1897?

A. At "The Merry Mills".

135th Q. Cobham, Albemarle County, Va.?

A. Yes, my home.

136th Q. Who was your family physician at that time?

A. Dr. Robert B. Shackelford, now deceased.

137th Q. What was the condition of your health on the 13th of February, 1897, and for some time prior to that date?

A. "O. K."

138th Q. Was your health such as to require the attention of a physician then?

A. No, the very idea is absurd, on account of the perfect condition of my physical health then.

139th Q. Did you receive a letter or telegram from Stanford White in February, 1897?

A. I did. The letter was inviting himself to my home.

(By Mr. Choate: I object to the statement of the contents of a letter not produced.)

140th Q. Have you that letter that you received from Stanford white?

A. I have not.

141st Q. Can you produce that letter?

A. I cannot, because Mr. Stanford White has been through my house from top to bottom, through all my private papers and letters, even letters from ladies, and then had the face to state that to me.

142nd Q. What were the contents of that letter received in February, 1897?

(By Mr. Choate: Same objection.)

A. It was that he—I should premise this by saying that I received two letters from Mr. Stanford White, and while the first letter I got from Mr. Stanford White was distinctly

disagreeable and showed hostility, (which he had alread showed me on at least two occasions and which I suppose would be brought up at the proper time), this second lette the one you asked me about, in this he said nothing disagree able, but calmly proposed his coming down to visit me wit another gentleman—if I remember rightly, Mr. St. Gauden the great sculptor, of whom I am a great friend, and alway remained so. I wired back. After the telegram I sent, I re ceived nothing from Mr. White but his appearance in perso without any warning or anything of the sort.

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150th Q. When did you see Stanford White after that?

A. I saw Stanford White in the fall at Monticello.

151st Q. Fall of what?

A. 1896.

152nd Q. What took place when you saw him on thi occasion?

A. I met him, drove over and met him before you get t the house itself at Monticello, met him on the slope there, and as soon as I got there—I would like to state that I regret ver much that I have represent the language, repeat the languag nothing more than swearing, strong swearing—I had neve had one word of altercation with Mr. Stanford White—h was near to me as a brother—I should also like to state tha this was before Mr. White took to the "Great White Way"— the first thing he said to me was, with an expression on hi face I had never seen there before, "What the hell do yo mean by burying yourself out here in the country; why don' you come to New York and live like a civilized man?" looked at him in astonishment. I have received very few suc shocks in my life—breaking up a friendship of years. A ma springing from a friend to a tiger. Looking at his face an examining it carefully—I make a specialty, in a very smal way, Mr. Choate, of physiognomy, of studying men t find out whether they are rascals or whether the are good men. I therefore study man as a man stud ies a horse—I don't wish to demean man to the level of horse. I can form an opinion of a man and find out in fiv

seconds whether he suits me or not. This is to explain my remarks—and I knew I was not making a mistake. I said to him, "What the hell do you mean by daring to ask me such a question? You have been running with the "Four Hundred" so long you have degenrated into a damned snob". That ended the conversation. He looked at me, turned deadly white, was terribly angry, and restrained the desire to attack me. He mastered himself with the most marvelous self-control; the appearance of furious anger died out of his face in less than five seconds, calculated. He said this in effect, "Never mind, old man, you have got a perfect right to stay where you choose". I thereupon said, "I am awfully glad this is all passed over". He said, "Yes". We then drove from Monticello in a close buggy, quite narrow, and he was patting my knee, or speaking to me in terms of affection to demonstrate that this thing had been forgotten until we reached the station at Charlottesville for him to board his train, when I said to him, "All of this is forgotten", and patted him on the back, and he said, "Of course. It is all forgotten."

153rd Q. Upon the appearance of Stanford White at your house on February 13, 1897, what did he do and say?

A. He said that I needed (or words to this effect, I only remember the striking parts and only attempt to remember the striking parts of a sentence which I want to carry through life)—he said words words to this effect, "You need a rest; come on to New York with me." Before replying, I thought it over briefly, and I was surprised at his words, for me to come to New York, because in New York in the latter part of December, 1896, (you see this visit was in February, 1897) —in the latter part of 1896 he made me a visit at Hotel Kensington, New York City, where I was stopping, and came in my room and said very brusquely, "How do you do?" Sat over by the window, without coming near me, stayed about five minutes and left. I was struck with that, because that did not dovetail with his previous action in New York. His action on his visit to me in the hotel had been one of the reasons I did not invite him to come to my house a few days

previous to that time in February. He plead with me and plead with me, and I think I can say, and I wish to draw attention, without conceit, to the fact that I yielded purely to suit him, because although I had business in New York which I could attend to, though nothing of an imperative nature (everybody knows there was practically nothing doing immediately after McKinley's election, particularly in manufacturing circles) (I do this because I am painting the memory of a monster dangerous to the human race). I yielded to White, and the last words he said, in which the man who was with him also joined—

154th Q. Who was that?

A. Dr. Eugene Fuller, of New York. Stanford White said, "For God's sake come and take a plunge in the Metropolitan whirl." I remember that because it is a striking sentence—a good sentence. I then went, that same day, Stanford White and Dr. Fuller accompanying me, to New York.

155th Q. Where did you take the station to go to New York that day?

A. At Barboursville, I am sure about that; there is no question about that. There was a question in Mr. Winthrop Chanler's deposition whether it was Cobham or Barboursville. It was Barboursville.

156th Q. How did you go there?

A. Drove there, started out in a hack. Mr. Stanford White and Dr. Fuller knowing that I did not, or at least Mr. White knowing that I did not care to see him, took the singular method of creeping up my back stairs, or rather back door, creeping up the back steps and sneaking in on me into the dining-room, where I was, and I turned around, and the first thing I saw was Stanford White and Dr. Fuller looking at me, and I was amazed, and although I was very much amazed, I have described what took place, and then we went out, after I had had my things packed and put on my coat, &c., and got in the carriage, which was there waiting, which brought Mr. Stanford White and Dr. Fuller there, and driven by a driver

from Charlottesville; evidently this was a Charlottesville hack, and got in with them.

157th Q. Did you drive all the way to the station with them?

A. No. At the turn-out on the turnpike between here and Gordonsville, where we turned to make the short cut on the main road from Gordonsville to Barboursville we found that time was pressing us and there was hardly a chance to make the train; so I suggested that we get into my wagon, which was following just behind us, and I should drive them to Barboursville.

158th Q. You suggested that who get out?

A. I suggested that, and here is where my testimony differs from the testimony given by the driver on day before yesterday (I am here to tell the truth; the man, of course, here to tell the truth also), but I remember distinctly that Mr. Stanford White got out and also Dr. Fuller, because I was determined to carry them to the station and not have them left. I took the reins, Dr. Fuller sat beside me and Mr. White stood up behind me and put one hand on Fuller's shoulders and one on mine, and we drove at full speed. The road was made of cobbles and dirt and perfectly safe to drive. (There was a ditch on either side.) I was driving a full three-quarter thorough bred and by driving at full speed we arrived at the station in time to take the train.

159th Q. Did you see your brother Winthrop Astor Chanler at Barboursville when you arrived there?

A. I did not.

160th Q. Did you see him on the train after you got there?

A. I did not.

161st Q. Did you get on the North-bound train?

A. Yes, north-bound train, through Washington to New York; we spent no time in Washington.

162nd Q. If Winthrop Astor Chanler says he was on that train you did not see him?

A. I did not see him.

163rd Q. Where did you go upon reaching New York?

A. I went to the Hotel Kensington.

164th Q. What did you do after stopping at the Kensington Hotel?

A. I arrived there, and Dr. Fuller and Mr. White, don't remember this detail, whether it was Dr. Fuller or Mr. White who showed me to a room. I took that, and a day or two afterwards I told Dr. Fuller and Mr. White that I did not wish to go into society; if anything, I was going to take a plunge in the whirl—my view of the whirl was playing pool and such things.

165th Q. How often while you were at the Kensington Hotel and prior to the time you were incarcerated did you see Stanford White?

A. I saw him almost every day.

166th Q. Did either of your brothers or Arthur Astor Carey call at said hotel to see you or to communicate with you between your arrival there in February, 1897, and the time you were incarcerated?

A. None of them.

PLAINTIFF'S DISBELIEF IN SPIRITUALISM, 290.

167th Q. Do you believe in spiritalism?

A. Absolutely no. There is nothing spiritualistic in my work in Psychology. I am anti-spiritualistic.

168th Q. Have you ever made a special study of Psychology?

A. Yes, I have.

169th Q. Under whom?

A. Under Prof. Alexander, of Columbia University.

170th Q. Have you made a particular study of any particular branch of Psychology?

A. I have, it is a neglected branch, a worn-out branch.

PLAINTIFF AND PETITIONER WINTHROP ASTOR CHANLER AND LEWIS STUYVESANT CHANLER AND THEIR PETITION-IN-LUNACY, 290-297.

Counsel for Plaintiff: I now offer in evidence and file what purports to be the petition, affidavits, certificates of lunacy and order of commitment, and a complete record in the matter of John Armstrong Chanler, an alleged incompetent person, dated March 10, 1897, and ask that they be filed as "Plaintiff's Exhibit N".)

(Counsel for Plaintiff: I also now offer in evidence and file a certified copy of the petition, affidavit, evidence, orders and proceedings in the proceedings had in 1899 in the New York Supreme Court, County of New York, in the matter of John Armstrong Chanler, an alleged incompetent, and ask that they be filed as "Plaintiff's Exhibit O".)

171st Q. In the petition just filed, which is a part of what is known as the 1897 proceedings, which are signed by Winthrop Astor Chanler, Lewis Stuyvesant Chanler and Arthur Astor Carey, the facts given, upon which the action was based, read as follows: "Mr. J. A. Chaloner has for several months while at his home in Virginia been acting in a very erratic manner. He has limited himself to a peculiar diet; he has burned his hand by carrying hot coals in it; he has devised many peculiar projects, such as a roulette scheme to beat Monte Carlo, and he gives as a reason for these and other acts that he is inspired by a spirit which directs him. For the past three weeks in New York he has constantly talked of this delusion, has neglected his health, has injured his person, has been at times wildly excited." The first allegation is that you had for several months while at your home in Virginia been acting in a very erratic manner, what have you to say about this?

A. Utterly false.

172nd Q. The second allegation is that you had limited yourself to a peculiar diet, what have you to say about this?

A. Unless you would call a vegetarian diet peculiar, it is utterly false, I limited myself to a vegetarian diet.

173rd Q. The third allegation is that you had burned your hands while carrying coals in them, what have you to say about this?

A. That is a fact, during a psychological experiment, purely scientific.

174th Q. The fourth allegation is that you had devised many peculiar projects, such as a roulette scheme to beat Monte Carlo?

A. Absolutely false, because I know that the "Zero" knocks out any kind of scheme to beat it.

175th Q. The fifth allegation is that you gave as a reason for those and other acts that you were inspired by a spirit which directed you, what have you to say to this?

A. Absolutely wrong, perfectly laughable, grossly ridiculous.

176th Q. Have you ever claimed that you were directed by a spirit?

A. Not unless I was so full that I did not know what I was saying, and don't remember that.

177th Q. Your answer is "no"?

A. No is my answer.

178th Q. The sixth allegation is that for the past three weeks while in New York you had constantly talked of the delusion, had neglected your person, had injured your person, had been at times wildly excited.

A. Maliciously and absolutely false.

179th Q. The above statements were signed by Winthrop Astor Chanler, Lewis Stuyvesant Chanler and Arthur Astor Carey as of their knowledge; please state what opportunity, if any, these gentlemen had for getting this information and where they were at the times they alleged these matters took place.

(By Mr. Choate: Objected to on the ground that it misstates the character of the petition upon which the witness's opinion is asked, as well as the grounds; also that it is immaterial and calls for a conclusion.)

Mr. Winthrop Astor Chanler has never crossed the threshhold of my doors at "The Merry Mills," Cobham, Va., in his life, and particularly at that time. Of course, he may have sneaked across them when I was away, but never when I saw him. The same is true of Mr. Arthur Astor Carey, and the same is true of Lieutenant-Governor Lewis Stuyvesant Chanler. It was common knowledge in the Chanler family and the go-betweens them and myself—

(By Mr. Choate: Objected to the statement of common knowledge of hearsay.)

Witness continues: The family generally knowing, as one member of the family will know where the other members of the family are—I happen to know that Mr. Lewis Stuyvesant Chanler was in Europe.

180th Q. When?

A. At the time these foully false and ridiculously absurd allegations against my common sense—

181st Q. Referred to in the petition?

A. Yes, were made.

182nd Q. And referred to in "Plaintiff's Exhibit N"?

A. Yes, and Mr. Lewis Stuyvesant Chanler arrived here on a cable notice spurring him on in time (I regret to have to make this statement) to cold-bloodedly perjure himself by signing the above perjury, as did the other gentlemen also perjure themselves when they signed it.

183rd Q. What opportunity, if any, did these gentlemen have for getting the information which they set out over their signature in the petition just mentioned and filed as a part of "Exhibit N"?

A. No opportunity.

184th Q. In the certificate of the judge in these proceedings he dispenses with personal service and gives the following reason therefor: "The patient is in such a state of excitement and is so easily made dangerous to himself and others by any criticism of or opposition to his delusions that a personal service would be attended by great danger?" What have you to say about this?

A. It is simply ridiculous.

185th Q. What did you do while at the Kensington Hotel, did you stay in the hotel all the time?

A. No; I usually went out to the theater at night, but did not go out in the day-time much. I liked to play pool and would go to the Manhattan Club and play after the theater. I would first take my dinner, generally at the Kensington Hotel, sometimes at the club, then I invariably went to the theater, and from there to the Manhattan Club, where I played pool for an hour or two, or longer.

186th Q. When did you go to the Club?

A. After the theater, then I would go to the club and play until midnight, maybe longer.

187th Q. Did you go alone usually?

A. Usually I did, because as it happened at that time Stanford White was very much occupied. Our old friendship had come up again I had a slight doubt, but I was beginning to get fond of him again, and I would like to have gone with him, but he was tremendously occupied by society—he and his wife went out in society every night; therefore I had to choose some one else, and the man whom I went with whenever possible was James Lindsay Gordon, formerly associated with District Attorney's Office, and now deceased.

188th Q. Did you freely go in and out of the hotel while you were there?

A. Absolutely.

189th Q. Did you go freely in and out of the club?

A. I should say I did.

190th Q. Did you have any restraint placed over you while at the hotel and club and theater, or anywhere?

A. None whatever.

191st Q. In the certificate of lunacy which is signed by Dr. Eugene Fuller and Dr. Moses A. Starr, they state that you had had one previous attack and had been confined at Neuilly, near Paris, France. What have you to say about this?

A. It is the most monumental lie I ever read.

192nd Q. This certificate of lunacy states that your present attack begun in November, 1896; state where you were at that time?

A. I was watching my horses go over the bars at Madison Square Garden Horse Show.

193rd Q. What were you doing and what were your business dealings at that time?

A. I was watching my horses take prizes, or making arrangement to sell those I did not want to keep. Was in this business with Mr. Julian Morris.

194th Q. Where did you bring those horses from?

A. From "Hawkwood"—this property I had bought, and which question I want to take up again.

195th Q. Where is "Hawkwood"?

A. About 8 miles from my place, "The Merry Mills," a 2,700 acre property.

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PLAINTIFF'S CONDITION OF HEALTH IN MARCH, 1897, 297-298.

196th Q. In March, 1897, were you anaemic or emaciated?

A. Not a particle. I was a bit trained down. I would not call myself corpulent—don't want to be corpulent,—and I was a little trained down, drawn down a bit too fine from working rather long hours.

197th Q. What was the condition of your health at that time?

A. Absolutely perfect, only, as I say, I was trained down a bit too fine.

PLAINTIFF AND PETITION IN LUNACY (continued), 298.

200 ~~199~~th Q. The certificate of lunacy just referred to also states that you were violent, excited, armed and threatened people while at the Kensington Hotel at this time what have you to say about this?

A. Absolutely untrue, with the single exception that I had a revolver in my satchel, which was in my room, and which I always travel with.

PLAINTIFF'S ALTERCATION WITH A WAITER AT HOTEL KENSINGTON, N. Y., 298-300.

201 ~~199~~th Q. Did you, while at the Kensington Hotel, threaten anyone?

A. Never (I see Mr. Choate look up at the world threat.) It has been stated that there was a threat about the absurd little talk with the waiter—that had been "a mountain made out of a mole-hill."

202 ~~200~~th Q. What trouble did you have with the waiter while at the Kensington Hotel?

A. There was a first rate waiter, except with the single exception, he was a great rascal. I found out that very soon. He became free and easy with me and told me how he did the cheating. I said, "You bring my checks right and don't try to overcharge me, and I will give you a good tip when I leave, but if you don't do what I tell you, and if you talk too much, I will fine you and deduct it from your tip." He seemed incorrigible in that respect of talking. He would come up and tell me what I wanted before I could open my mouth and tell him what I wanted. That got monotonous, so one day I thought it would be "a good job to reduce the size of his head" (to use a vernacular). He made the break of telling me what I wanted to eat. There was a fire escape outside and I made him go out there. I said, "You step out there; I will shut the door, (or the window,) and watch your head reduce in size; it will be

no injury to you, but a great benefit to me." There was no storm going on. It was perfectly safe outside, and after he had been out there a few seconds, a quarter or half a minute, he was perfectly respectful; he stood the thing all right, and said, "I will not offend again." I am not giving the exact language here, but the words were to the effect of what I have stated. But here is where the thing came in. I appeared in his eyes a regular thief—a bigger thief than he; because he thought I was not giving him a red cent after promising him a present.

203 ~~201st~~ Q. How did you happen not to give him a tip?

A. Because I was carried away to "Bloomingdale" and I was not able to pay him, and I would like to find him now and pay him $5. He did not get a cent; naturally, on the evidence, he went down in the servant's hall and enlarged on the occurrence.

204 ~~202nd~~ Q. Then it is not true that you chased him around the room?

A. No; I knew that he would go where I told him without any chasing, because he was a shrewd waiter, and he knew I meant money. I never had any other trouble with him; I liked his wit.

205 ~~203rd~~ Q. Then you did not threaten him?

A. Absolutely, no. He knew what the threat was—the implied threat of cutting down his wages. I was to tip him after the work was done; there was no money to be passed until I was ready to leave. I left the hotel without giving him anything. Of course, he felt sore against me for not keeping up my agreement. I don't blame him a bit.

AUNT OF PLAINTIFF, ALLEGED LUNACY OF, 300-302.

206 204th Q. This certificate of lunacy also states that you had one insane relative, namely, a paternal aunt; is this true?

A. This is true, but false at the same time, in that it gives the casual reader the impression that the lady had a taint of some kind of insanity in her, whereas she had been

a perfectly healthy girl before she got the Roman fever going out in society in Rome, Italy, way back in 1850. Roman fever was deadly and one of the most terrible forms of fever; people would flee from it as they would from small-pox or leprosy. She caught Roman fever, got better, and unfortunately had a relapse, and it was from a relapse that she went insane, as frequently happens when persons have a relapse from scarlet fever the eyes are affected, sometimes producing blindness. It was not an original or hereditary taint of insanity, but was the result of Roman fever.

207th Q. I take it that she did not have paranoia, but dementia?

(By Mr. Choate: Objected to, as calling for conclusion.)

A. No.

208th Q. Do you know what the diagnosis was in her case?

A. No, except it was from a relapse.

209th Q. Of a nature of something violent in the way of dementia?

A. Dementia is not violence; I have made a little bit of study, don't pretend to be an expert on insanity. Dementia is drooling at the mouth; mania is violence.

210 208th Q. Mania is violence?

A. Yes.

211 209th Q. Did this result from fever or not?

A. Yes; my father told me that she was in perfect health prior to that as my other relatives.

212 210th Q. This certificate states that you were subject to general nervous hereditary influences, what have you to say to this?

A. I say that this is a flim-flam expression. Utterly false. Simply getting together a lot of high-sounding words.

213 211th Q. Were your father and mother healthy?

A. I never saw two more healthy people; they were absolutely in perfect health until the day of their death; their

illness was extremely short. They died with pneumonia, which kills the strongest man very quickly. It is a well-known fact in New York that the stronger a person is the more apt they are to die from pneumonia. That is my experience with friends of mine who have died from it.

PLAINTIFF AND PETITION IN LUNACY, (continued), 302-313.

14 ~~912th~~ Q. This certificates also states that you were on the 10th day of March, 1897, insane and a proper subject for custody and treatment in some institution for the insane, giving the following facts as indicating insanity: "He (meaning you) said that the color of his eyes, the shape of his nose and ears had been changed, so that he resembled Napoleon, that this was done by the spirit which acts upon and through him, that he is inspired to lead a holy war in Europe, that his coming has been foretold in the Book of Revelations." "He talked volubly about his inspiration, frequently went into a trance-like state, in which he talked French and on returning to English declared that it was not he but the spirit which had been speaking. Showed a scar of a burn on his hand made by carrying a live coal at the command of a spirit, pointed out certain lines in a picture of the sphinx which he claims were his initials, put there in prophecy of his coming, said that he saw his name carved in marble of the mantel. Said that the spirit commanded him by its voice which he heard, said that he was immortal and that nothing could harm him, thus excusing himself for exposure to cold, neglecting ordinary clothing, going in bare feet." "His valet, who has been with him 14 years, described the gradual development of this delusion of his being inspired, and says it has led him to do many insane acts. He has become suspicious of friends, has secluded himself, and has been neglecting his food, hence has become thin and anaemic." Going back to the first statement, which is said that the color of your eyes and the shape of your nose and ears had changed so that you resembled Napoleon, what have you to say to this?

A. The only portion of that that is true is as regards the color of the eyes and absolutely nothing else.

215 ~~213th~~ Q. What was the color of your eyes twelve years ago?

A. Light brown or hazel, interchangeable terms.

216 ~~214th~~ Q. Do you mean that the entire iris was light brown and did not contain any gray at all?

A. I mean that, yes.

217 ~~215th~~ Q. The second statement is that you said that this was done by the spirit which acted upon and through you, and that you were inspired to lead a holy war in Europe, and that your coming had been foretold in the Book of Revelations, what have you to say about this?

219 A. A remarkable fact, that is partly true. I did at the request of an alleged scientist and expert in trances go in, on more than one occasion, to trance-like states, in which I spoke both French and English. This is a psychological form of experimentation—this trance-like state—because during that state what is now known by the people, or numbers of them, as the sub-consciousness, or sub-conscious force, makes itself known by the party's surrendering his will to the extent of allowing this force (nothing mysterious about it), this sub-consciousness to operate his tongue and labial muscles and breathing apparatus, in general to the extent,—strange though it may appear, though well known among students of psychology—enabling them, or the person who has this gift, or whatever you may call it (to me it has been a curse), enabling them to speak, that is, apparently speak, but without any will or volition on their part, and without knowing, and that is the strange part, what the next word they are going to say will be, and, strangest of all, there is no mixing up or ungrammatical statement in this said trance-like state, though there is generally speaking, nothing but absolute rot, such as this "poppy-cock" that was alleged in the petition.

220 ~~218th~~ Q. In "Plaintiff's Exhibit N" it is stated that you frequently went into a trance-like state and talked in French and on returning to English declared that it was not you,

ut the spirit which had been speaking; do you mean to say hat you have no confidence in anything you may have said while in a trance-like state?

(By Mr. Choate: I object to the witness's statement of anything as hearsay.)

A. None whatever.

917th Q. The fifth statement is that you showed a scar of a burn on your hand, made by carrying a live coal at the command of the spirit; what have you to say to this?

A. The end of it is perfectly ridiculous, but the fact that I did carry, not one, but several live coals is true, and it was done in a purely scientific experiment, and one which was very fruitful in results, both as to landing me in "Bloomingdale," and thereby showing me the rascality that men can fall to who wear dress suits at night, and frock coats and clean linen in the day-time; the second, the discovery of a new law, so far as I know, a psychological law, or a new law in nature, or the answering of a question, which, so far as I know, has never been answered before; and, third, the giving me proof positive, (I don't want anything more positive than the suffering I had from those coals), that I had a will which dominated its surroundings, and the knowledge when I heard the door of my cell, or ward, clank behind me the first time I entered my ward in "Bloomingdale," the night of the 13th of March, 1897, that this knowledge made me as indifferent to my surroundings as though I were in a palace. I knew, in other words, that the terrible power of environment was as nothing against live coals to overcome. Now this question that I answered was this—it is the law known as the conservation of energy, that means the preserving of force or energy. We all know that, it is taught in the schools, that no force is lost; for example, the force stored up in coal, which originally accumulated there, turns into fire when lit, that being turned into the steam which runs an engine. No further simile is necessary. Now I made that experiment with one thing in

view, to find out whether this law of the conservation of energy held true universally and without exception, or held true at all, and, if so, whether without exception among things mental. I wanted to know if this law of the conservation of energy held true as regards things mental, as without exception it does regarding things material. The way I had come to think out this problem was this, that for three years previous to the time I made the experiment I had been gradually coming from a meat eater to a vegetarian. I would rather eat meat than any other form of food—give me meat and bread and I was satisfied. I had no more use for a vegetarian diet than any other man. I found by chance, certified to by a physician, that meat gave me gout if I ate it, if I did not eat it I had no gout in my system. Gradually I found out I had to leave off chicken, steak, oysters, everything, for a certain point of view, that makes life worth living. At the same time I was a teetotaller.

222 ~~218th~~ Q. Was that what enabled them to call yours a peculiar diet?

A. Yes. I was nothing, however, but a plain, ordinary vegetarian—not quite, because I did not stop eating oysters until about the time I was placed in "Bloomingdale." While I was in "Bloomingdale" I became a vegetarian. Not of my will—I loathed and despised my vegetarian diet; it made eating a job, made it like sawing wood, so far as any satisfaction came out of it, except the satisfaction of being able to crush my desires and do this somewhat difficult proposition, and if anybody thinks it is not a difficult proposition let them try it. The question, therefore, brought up through my discovery of what I had to eat and having to conquer my desires, was whether this mental force, which I used every time, and which I put in motion every time, I declined to eat meat, three times a day, whether that force was wasted, or whether it was stored in my brain or mind or wasted. In other words, whether the torment, the conquering of my desire necessary to eat the prison punishment diet, which I underwent every day was lost, or whether my character became

stronger by this self-denial. The only way I could tell whether this force was wasted—I had not heard if the question could be answered—it suddenly occurred to me one evening how to solve this question forever. It was this, that if I made three or four rules to follow and carried them out without varying, that I had acquired a will power of certainty, and the ability to use it to an unusual degree, and had improved myself one hundred per cent., because the first year I took up this vegetarian diet I broke the ring finger of my right hand and I could not have it set until I took a dose of chloroform. That was in 1893. I had an accident in a hunting field. My horse fell and rolled on me and broke the ring finger on my right hand, and as I said, I had to take chloroform before I could have it set. It occurred to me to prove this matter. I knew I had a subject in myself, which was absolute—an abject coward touching pain, so I knew I had a perfect subject. These were the rules I was to follow. I was to carry a handful of small oak live coals, not blazing, not coal coals, but oak coals, such as I burn in my old Virginia fire-place; that I was to fill up my right hand with coals, scrape them together with my finger tips (this was a purely scientific experiment; I had no intention of becoming a hero or martyr in the interests of science—had too good a time and prospects before me.) The first thing was to scrape the coals together with my finger tips, then pick them up, then to close my hands on those coals, walk seven and one-half feet in one direction and then seven and one-half feet at right angles, because at the end of the last seven and a-half feet was a window opening on the grass (no danger of setting fire to the house; there was nothing pyro-maniacal in this act, Mr. Choate, purely scientific.) The first condition was to scrape up the coals with the finger tips, then pick up the coals and close my hand on them; the second condition to walk squarely and without haste this fifteen feet; and, third, not drop a coal during that ghastly walk; and, fourth, throw them out of the window, and not throughout any of this ex-

periment show any break of nerve; and, finally, and lastly, not to utter a sound during all this experiment.

223 ~~219th~~ Q. Those were the conditions, then, were they?

A. Yes, and I fulfilled them, and not for one million dollars would I do it again.

224 ~~220th~~ Q. And you consider this experiment to have been a success?

A. Yes, absolutely; I go on record in answer to the question, whether the law of conservation of energy holds good in things mental, as well as things material, and say that it does; second, I should like to say what I did after, immediately after this experiment. I went to my bath-room and turned on the water in the basin, washing the hand and picking out the black wood cinders which stuck into my blazing red-fleshed right hand during the tortures. I then summoned my friend, James Lindsay Gordon, who was in the house at the time, to my assistance, and asked him to bring me one of several tin or iron buckets which stand outside on the landing in case of fire. I asked him to bring one of those into my bed-room, in which bed-room said experiment had just been accomplished—to bring in one of these buckets and place it where I could put my hand in it. It was a cold night, almost freezing in the house. I pushed up my shirt and plunged my hand up to the elbow into the water and had no sensation whatever of the absolutely unbearable agony of ice water to the hands. If anybody doubts the horrible torture which will ensue in about ten or fifteen seconds, estimated from holding your hand for a few seconds in a bucket filled with large blocks of ice, if they have any doubts about it, let him or her try it and they will find that I am speaking the truth. However, in my case that agony was counterbalanced by the terrible heat of my blazing (so to speak) right hand, and the whole bucket of water in about a minute was reduced to tepid water, so horrible was the inflammation in my right hand. I then called for another bucket of water and reduced that in a little longer time to the same state as to the former bucket I then washed my hand and

treated it with vaseline, made a sling of a handkerchief and bandaged it after putting the vaseline on it, to keep the air out. Gordon helped me to do that. I then took a sling and carried it for about ten days. As soon as I did this; that is to say, before I put my hand out of sight, I took the following observations from a scientific point: that a blister the size of half an egg had drawn up in the hollow of my right hand in the shape of an egg cut traversely in half, standing in my palm, there were large blisters on the lower phalanges of each finger and thumb, and a blister at the base of the thumb pretty considerable in size, that disappeared in about ten days, leaving a slight mark—I don't say scar, as the record says, but a slight abrasion, because I have no scar that could possibly be made by fire. I have a scar there but a sewed-up one, not made by coals, which would be irregular in shape and round. That ends that experiment. The good that I got out of it was the perfect peace of mind as regards the first question that enters into anybody's head when placed in a madhouse—can I stand this?

225 ~~221st~~ Q. The sixth statement is that you pointed out certain lines in a picture of the sphinx, which you claimed were your initials, put there in prophecy of your coming—what have you to say about this?

A. Utterly false.

226 ~~222nd~~ Q. The seventh statement is that you said you saw your name carved in the marble of the mantel, what have you to say about this?

A. Utterly false, except that there was a vein in the marble, which by pure chance corresponded with the way I write my initials, and they said they agreed with me. If I can get to the room when I go to New York I can have it photographed and prove it. There is a strong resemblance to the way I sign my initials, but it is a vein in the marble, not cut, but act of nature.

227 ~~223rd~~ Q. The eighth statement in the commitment papers dated March 10th, 1897, is that you said the spirit commanded

you by its voice, which you heard, what have you to say about this?

A. That is utterly false. There was no commanding about it; but when I entered a trance-like state, aforesaid, of which I was perfectly conscious, had my eyes open, could hear myself speak, I said I heard my own voice, and so did everybody else in the room, it was my own voice. It was this sub-consciousness using my labial and vocal organs and breathing apparatus to speak; but it does that with all so-called mediums or psychics, or automatists—I don't believe in spiritualism.

PLAINTIFF'S STUDIES IN PSYCHOLOGY, 313-316.

224th Q. Have you ever read any work on Psychology?

A. Yes.

225th Q. State what works on Psychology you have read?

A. I begun the work on Psychology which was taught at Columbia way back in 1882 or 1883. I was first drawn to Psychology by a book, "Law of Psychic Phenomena," by Thomson Jay Hudson, LL. D. This book was first printed about 1895, if I recollect rightly, and received the considerable literary countenance of being received by the Sunday reviewer of the New York "*Sun*," one Hazeltine. I read this and bought the book. That was really the first notion I got of this modern discovery, that is, discovered in the last decade or last twenty years.

230 226th Q. When did you read that?

A. About 1895 or 1896. I am not certain about the date. That opened up these discoveries which had been carried on the dead quiet in a semi-disreputable manner by these so-called mediums; that is to say, they would cheat, they would prophecy the future and sometimes hit and sometimes not, but after a while learned men like the late Prof. James, of Harvard (I mention him particularly because he is the chief of that form of psychology) began to take interest in this hitherto disreputable form of human phenomena, and finally,

with other scientists, hired a medium known as Mrs. Piper, a perfectly reputable lady of Boston, Mass.—husband living, and they living together. She was engaged by an organization of great force, that is, great force of intellect, known as the Society of Psychical Research.

227th Q. You have read a book by Prof. James dealing with automatic speaking?

A. Prof. William James, M. D., Professor of Psychology at Harvard University, wrote the standard book in English on Psychology. It is a large book in two volumes, entitled "The Principles of Psychology," and is published by the American Scientific Series. In this he cites specifically automatic writing—

(By Mr. Choate: I must object to the statement of the contents of these books.)

232

228th Q. You have read an essay by Prof. James dealing with automatic writing?

A. Yes.

229th Q. Any other books?

A. Yes, a book called "From India to Mars," being the mediumistic utterances of a perfectly healthy medium in Geneva, Switzerland, who goes into a trance state, loses consciousness as a result of being hypnotiized, and then personifies different people in history, and then imagines himself an inhabitant of Mars, and what not.

230th Q. When did you read that book?

A. I read that book the last year I was in "Bloomingdale," I think.

231st Q. Have you read any other books?

A. I have read Prof. Joseph Jastrow, President of the American Society of Psychologists, I believe.

232nd Q. Any other books?

A. Quackenbos on Hypnotism.

By Mr. Choate:

Q. Please tell us when you read these books—when you read James first?

A. I read James first in 1900.

Q. And Jastrow and Quackenbos?

A. I don't remember those dates exactly. I read one of Jastrow's in 1901, or it was printed in 1901, "Fact and Fables in Psychology." I have also read another by him, written by him some years later, called "The Sub-Conscious." That about winds me up.

By Mr. Choate:

Q. When did you read Quackenbos?

A. I cannot be sure of these dates, because they were read different times.

Q. Did you read Quackenbos since you left "Bloomingdale" or before?

A. All these things were read after I got back from "Bloomingdale," with single exception of the book by Hudson, and, as I stated, I think I read the book from "India to Mars" the last years I was in "Bloomingdale."

[redacted]

PLAINTIFF AND PETITION IN LUNACY (continued), 322-324.

241

~~283rd~~ Q. The ninth statement in this certificate of lunacy is that you said you were immortal, and that nothing could harm you, and thus excused yourself for exposure to cold, neglect of ordinary clothing and going in bare feet; what have you to say to this?

A. It is absolutely ridiculous and utterly false, with one exception, and that a modified exception only, there was a slight molecule of truth in it—when I go to my bathroom to take a bath I go in naked feet in slippers, if the temperature in the bathroom is sufficient to allow that, when I go to my bathroom, without danger of catching cold, and when the bathroom immediately connects with my room. That is the only particle of truth in the statement; the balance of it

is a direct, unqualified, deliberate, I may say, damnable lie and perjury, because he swears to it, I understand, one Moses Allen Starr, to my mind one of the very worst men that ever lived. He began the medical plot to win a game which could not be won without having recourse to crime. It was necessary that all the alienists, all the experts in lunacy should be ready and willing to perjure themselves at any time and to any extent asked by their employers—on the evidence, Messrs. Winthrop Astor Chanler, Lieutenant-Governor of New York; Lewis Stuyvesant Chanler, and a cousin of mine, Arthur Astor Carey, of course, connected with this plot were lawyers, because these conspirators, the three conspirators simply, as a shorter way of identifying them in everything I wish to refer to them than giving their full names. The said conspirators, of course, were guided by learned counsel, and it was, of course, (I say this as a lawyer, as a member of the New York Bar) that it was necessary, of course, that the instructions, the plan of campaign in this plot—this villainous, criminal, mercenary, sordid plot—which I shall prove here by court evidence to have been founded entirely upon fraud and malice—that the plan of campaign was, of course, mapped out in its formal, final form by the learned counsel, employed, who were the professional go-betweens, on the evidence, go-betweens between the said conspirators and the said perjured witnesses, by which I mean the medical men, and alienists aforesaid. It was necessary for this criminal—applied strictly to Mr. Moses Allen Starr—I have not any others I wish to apply that to yet. Mr. Moses Allen Starr was a most polished expert, on evidence in felony; one of the most polished villains I have ever seen. Of course, the term criminal is not exactly legally technically correct because he has never yet been indicted and served time, but, on the evidence I shall show here, he should have gone through both said processes, of being indicted and serving time at Sing Sing. Mr. Starr was most friendly in his manner and ingratiated himself into my, more or less, confidence.

243 ~~234th~~ Q. Do you claim that Dr. Starr was the author of that statement?

A. I do, most certainly, on the evidence, which I shall give.

244 ~~235th~~ Q. You claim that this gentleman, of whom you are talking, is the author of this statement?

A. Yes, the very essence of it, the spirit.

* * * * * * * * *

ST. MARGARET'S HOME, PLAINTIFF'S CONNECTION WITH, 274-281.

(John Armstrong Chaloner on the stand). In 1894—here another question comes up—

149 ~~236th~~ Q. What question is that?

A. That is a question upon which my honor has been attacked, and I have been made out by innuendo too marked to be overlooked by anybody that I had stolen money from this sacred institution—from this children's home—that I was an unnamable dog—

150 ~~237th~~ Q. Who was the person who made that charge?

A. Mr. Thomas T. Sherman, of New York.

151 ~~238th~~ Q. Mr. Chaloner, have any changes been made by any person relative to the way in which you have handled certain bequests to you under the will of your father?

(By Mr. Choate: Objected to as immaterial, irrelevant and leading.)

A. The most insulting charge a man can have against him in a financial way,—practically theft, and theft of a sacred fund.

152 ~~239th~~ Q. Please state what these charges were and by whom were they made?

A. By Mr. Thomas T. Sherman. It is in the brief made by him or his attorneys; they were made in his answer, or in one of the papers appearing in the brief in the record.

(By Mr. Choate: I object to the statement of the contents of writing not produced.)

153 240th Q. Is there anything further you desire to say in reference to your relations with your former lawyer, Maxwell?

A. No, not yet, because I have not finished with this matter I was just speaking of.

154 241st Q. Is there anything further you desire to say in regard to St. Margaret's Home?

A. Yes.

155 242nd Q. Please state it as briefly as possible?

A. I received this amount of $50,000 in 1883, when I came of age, and I immediately looked to the investment of this sacred fund—I say sacred, because it was for children, more than a hospital, it was for children. I finally put it in bonds after a few months careful investigation—in first mortgage, gilt-edge bonds. That was in 1883; by the time of 1894 thi $50,000 had increased to, it seems to me, the certainly laudable sum of $70,000 in gold. The running of this orphan asylum required about $2,000 per annum to run it rightly and here there was money running up from these railroad bond- $70,000, at 4 per cent. I decided to put those securities into the most secure thing outside of government bonds, that is, first mortgage bonds on good real estate in Manhattan. I followed the example of the United States Trust Company, which had my property; therefore I determined to put these bonds as security on some secure property. I had bought in 1883, when I came of age, a piece of property known as 298 Broadway, two blocks above City Hall Park, on the right hand side—a most splendid piece of property, with a future to it. Then it had on it a five-story dwelling, which had been set up in stores, that was netting me enough to allow me to put a $70,000 second mortgage on that.

156 243rd Q. Did you make such a mortgage on 298 Broadway?

A. No, I did not.

157 244th Q. What did you do?

A. I tried to do it. I at once decided that the fund of St. Margaret's Home had been increased sufficiently, and did not require any further increase, but required putting in a solid place, and thought that no better man could be found than the late Bishop Potter to advise me. I then decided to incorporate St. Margaret's Home. The Board of Directors was to have only two men on it and three ladies known in charitable work. I went to see Bishop Potter and he at once acquiesced in the plan. I had then, of course, to go through the legal steps necessary to incorporate the St. Margaret's Home, one of which was to get the consent of the Commission of Charities to this incorporation of St. Margaret's Home. Mr. William Rhinelander Stewart, I believe, was chairman of this Board, and I went to see him and two other members of the Board. One of them was Dr. Alexander. He received me in a most gentlemanly manner, and gave me to understand that I would receive his vote. I saw another, Dr. Green, and he practically turned me out of the room. I then went to see Mr. Wm. Rhinelander Stewart. He said, "You are looking well," told me that I kept my hair, and said ,"Why do you want this Home incorporated?" and he actually looked at me with a stern eye and said in a manner that indicated he thought we were after graft—that Bishop Potter was after graft—Mr. Wm. Rhinelander Stewart said in effect, "What is your object in doing this?" I said, "My object in doing this is to secure to the orphans that I am housing and keeping, the Home, and to make the funds secure by placing the mortgage on my property."

158 ~~245th~~ Q. To whom were you speaking?

A. To Mr. William Rhinelander Stewart, one of the leading Knickerbockers of New York. He said, looking very suspiciously at me, although he knew who the Board of Directors were to be—Mrs. Kinnicut was one and one of Bishop Potter's daughters was another, and Miss Margaret Livingston Chanler was another—he said, "Do know that you can get $2 or so a head from the State if you have this Home incorpo-

rated and get public aid?" I said, "I was not aware of that. Then he said in words to this effect, "I will think the matter over," and dismissed me, with the remark again how I kept my hair, and gave me two days to come back. I returned and he refused to give his consent to the incorporation of St. Margaret's Home.

159 ~~246th~~ Q. What did you then do in reference to St. Margaret's Home?

A. I then being determined not to be deterred from my good intention in placing the mortgage on such a solid piece of property, not wishing to be disappointed in seeing these orphans get as security this splendid piece of property, and not being able to incorporate it, I deeded it in my will to Bishop Potter.

160 ~~247th~~ Q. Was that the will you previously referred to as the will made in 1896?

A. Yes, it was worded stating the whole transaction and asking that he restore to my executors the balance over and above the $70,000 that was to go to St. Margaret's Home. I then had made as secure a place for this mortgage of $70,000 as I could get, in spite of the Commissioners of Charities of New York; so I then took this $70,000 and carried it on my books, entered it on my books, and provided for it in my will, as I have stated, and put that will in my safe deposit box. I also carried on my books a St. Margaret's Home fund. I had already done that, but I simply, instead of paying $2,400, I gave interest at 4 per cent., that made $2,800, and it only required $2,400 to support St. Margaret's Home, and I paid out what I had been paying out and kept the $400 as a St. Margaret's Home sinking fund on my books. I took that $79,000 and used it, and I did not say a word to anybody about it—it was nobody's business but my own, and I had certain notions to see who were my friends and who were not, and I knew the $70,000 was fully provided for in my will—it is in the will to-day if the will is in the place I put it, and has not been stolen or taken out by any person illegally. I took this $70,000, and used it as I wanted it—it was my money, you

see. The $70,000 was turned into a second mortgage of $70,000 on a piece of property, which naked and with no house on it was valued several years later at $140,000.

Q. That was 298 Broadway?

A. Yes, and the increment was growing all the time. R. G. Dunn with a sky-scraper at one end, Col. John Jacob Astor at the other end, the Pierre-Lorillard estate on one side of me, and Arthur Astor Carey on the other side. It was one of the best blocks on Broadway. I therefore thought I had done nothing that was not to the profit of St. Margaret's Home. I am now answering these charges that were made against my honesty, that there appeared no account of this fund, that it had disappeared and there was nothing in my estate to represent it in whole or in part.

Q. That is the charge?

A. Yes, that I did not have $70,000 to make good the money that I had taken. It is absolutely false, as the value of the property, I then held, made out on the schedule of Mr. Sherman, will show.

(By Mr. Choate: I must render a general objection against the manner in which this deposition is being taken. As long as the deposition is in continuous narrative form, it is impossible for counsel for defendant to point out the inadmissible parts of the testimony and make objections. The deposition should be taken in the usual way, by question and answer.)

(*Note.*—It is stipulated on the record that there are no charges made by the Committee, and that it was never his intention to make any charges in any way reflecting upon the custody or control of the St. Margaret's Home Fund while it was in the charge of the Plaintiff in this action, and nothing has been found by the Committee as regards that fund which can in any way reflect upon his integrity.)

DEPOSITION 1911

VOLUME II

United States Circuit Court for the Southern District of New York.

JOHN ARMSTRONG CHALONER, Plaintiff,

against

THOMAS T. SHERMAN, Defendant.

PURSUANT TO A STIPULATION entered into on the 23rd day of April, 1911, the deposition of John Armstrong Chaloner was continued at the Colonial Hotel, Charlottesville, Albemarle County, Va., on October 3d, 1911, at 11 o'clock A. M., in pursuance to the annexed notice.

At the time stipulated in the foregoing notice, counsel for plaintiff and for defendant appeared and it was agreed by mutual consent that the hearing be adjourned to 3 P. M., on the same day and at the same place.

PRESENT: F. A. WARE and W. GILMER DUNN, of Counsel for Plaintiff, and JOHN ARMSTRONG CHALONER, of Counsel, and plaintiff in person.

and

R. T. W. DUKE, JR., and MOON & FIFE, Counsel for Defendant.

At 4:45 P. M. on the same day and at the same place the deposition was resumed, the above mentioned parties being present.

CHOATE, JOSEPH H., SR., (CONNECTION WITH "BLOOMINGDALE," 211-217.)

In order to get a clear idea of the true inwardness of the machination of which, on the evidence, I have been a victim, it is necessary to touch upon a subject which I would naturally avoid on the principal *de mortuis nil nisi bonum*—but reluctant though I be, the requirements of justice require that nothing be kept back which would otherwise throw light upon this most infamous conspiracy in high places and under apparent form of law.

The shadiness of the proceedings aforesaid, at which a committee of my person and estate was appointed, is thrown into strong relief when one considers who said committee of my person and estate was. Already one of the "Governors" of "Bloomingdale" was interested within its walls, as has been shown; now a second step was taken to interest another "Governor" of "Bloomingdale" in keeping me under his lock and key.

Said step was nothing less than the outrageous one, from a legal and equitable point of view, of appointing as my champion, as the protector of my property and person, the law partner of Ambassador Joseph Hodges Choate, "Governor" of "Bloomingdale." As "Governor of 'Bloomingdale'" Ambassador Choate was keenly interested in my continued incarceration therein for more than one business or professional reason. *First.* I was always one of the highest priced "patients" within the walls of "Bloomingdale." The last year I was there I had the honor of being the highest "pay" (male) "patient," the "star patient" of "Bloomingdale." "Bloomingdale," it may as well be admitted first as last, is run purely for money, purely on business principles, and not on charitable ones. Every "patient" within its walls is a "pay patient" and as high a "pay patient" as the parties putting him or her there can be squeezed into making it. The exceptions of this ironclad rule are a handful of pauper lunatics from Westchester County.

which are taken in free for the purpose of dodging the county taxes on the large and valoable real estate and tenements possessed by the Society of the New York Hospital in the city of White Plains. Should a party cease to pay for a "patient" he has put into "Bloomingdale," the "patient" would be shipped without ceremony to Ward's Island or some other pauper hospital and left there. Such being the case, it is a simple business proposition to guard carefully tht goose that lays the golden eggs, to guard as carefully as possible and as long as possible the goose that lays the golden eggs, in other words the unfortunate "patients" either *bona fide* or bogus lunatics within the hospital walls of "Bloomingdale." So much for the first reason impelling Ambassador Choate towards desiring my indefinite incarceration at "Bloomingdale."

Second. The second bcsiness or professional reason operating in favor of Ambassador Choate's desiring my continued incarceration at "Bloomingdale" was furnished by my tireless threats during the nearly four years of my imprisonment therein—to not only show up before the world the scandalous lack of law in the New York Lunacy Laws, and the infamous lawlessness of the Insane Asylums scattered throughout the Empire State, but also to bring suit for damages against "Bloomingdale" commensurate in size with the infamy of the indignity to which I had been for nearly four years subjected by it, to say nothing of the twenty thousand dollars—three years and eight months at one hundred dollars per week, not counting extras—to say nothing of the twenty thousand dollars of which I had been practically robbed by it during that time. The "Governor" of any institution on earth would be keenly alive to the danger of letting out of his clutches anybody bearing such a score to settle against his institution. The "Governor" of any institution on earth would from the most elementary laws of business and self-preservation, be strenuously moved to confine for life the bearer of such a score against the institution in which he was interested.

Third. The third business or professional reason actua-

ting Ambassador Choate was the presumable fact that as the partner of my said committee of my person and estate, he shared the emoluments flowing therefrom.

Fourth and lastly, Ambassador Choate's law firm was said to be the legal counsel for "Bloomingdale" at the time one of its members was appointed committee of my person and estate. It may be a little difficult to prove this, but I swear I was told so in the summer of 1899 by one of the highest members of the "Bloomingdale" medical staff. If I am not mistaken, the firm of Evarts, Choate and Beaman were not at all anxious to herald or trumpet the fact as to what law firm was the legal adviser of "Bloomingdale." I am led to this conclusion from a perusal of the Annual Report of the Society of the New York Hospital for the year 1899, now before me. There I read under the heading

"STANDING COMMITTEE OF THE BOARD OF GOVERNORS."

EXECUTIVE. ....

William Warner Hoppin, Henry W. De Forest, Elbridge T. Gerry, Edmund D. Randolph, Hermann H. Cammann, George G. Haven, George S. Bowdoin, George G. De Witt, Edward King, Augustus D. Juilliard, William Alexander Duer, Howard Townsend.

BLOOMINGDALE.

Frederick D. Tappan, Chairman, Richard Trimble, Waldron Post Brown, Sect'y., Phillip Schuyler, James William Beekman, Thomas H. Barber.

ON LAW.

Elbridge T. Gerry, Henry W. De Forest, George G. De Witt.

REAL ESTATE.

Hermann H. Cammann, Chairman, James O. Sheldon, Waldron Post Brown, George S. Bowdoin, Edward King.

Elbridge T. Gerry, Chairman, Phillip Schuyler. Edmund D. Randolph.

The President, Vice-president and Treasurer are *ex-officio* members of all committees.

It will be seen that the illustrious name of Joseph Hodges Choate is absent from each and every committee. Surely a curious state of affairs. Surely a curious state of affairs that the most notorious lawyer in the United States should be conspicuously absent from the "Bloomingdale" Committee on Law. Reading David H. King, Jr., as a misprint for Edward King, or *vice versa*, the above committee contain the full list of "Governors" of "Bloomingdale" except Messrs. Sheppard Gandy, President; Theodorus B. Woolsey, Vice-President; J. Edward Simmons, Treasurer; Henry W. Crane, Secretary; Fordham Morris, George F. Baker, and Joseph Hodges Choate.

Another question comes to the mind of a thoughtful student of the above list of names, to-wit: What use has a supposedly charitable, a supposedly eleemosynary institution for a "Committee on law?" Is it perchance a legislative steering-committee on law? Is it perchance the author of "the manipulated legislation at Albany," alluded to in my said letter to Captain Micajah Woods, which is responsible for the therein described monopoly in bogus maniacs fostered by the present illegal lunacy laws of the Empire State? If so, no more experienced veteran in the handling of legislation than Mr. Elbridge T. Gerry could have been hit upon for a seat thereon.

But why is the illustrious name of Ambassador Choate left off the Committee on Law aforesaid? Evidently for the very good reason that Mr. Choate was too occupied as counsel for the Society of The New York Hospital. It will be remembered that I was informed on the highest authority that the firm of Evarts, Choate and Beaman was the legal coun-

sel for "Bloomingdale" in 1899. Such being the case the late Prescott Hall Butler appointed committee of my person and estate and member of the firm of Evarts, Choate and Beaman, was receiving pecuniary remuneration as my "committee," while as a member of the firm of Evarts, Choate and Beaman he was receiving pecuniary remuneration as counsel for "Bloomingdale." In other words as I, on the facts, was opposed to "Bloomingdale" and proposed to bring suit against it at the first opportunity, "Bloomingdale" and I were opposite parties in a controversy and Mr. Prescott Hall Butler was acting for both parties at the same time. In other words Mr. Prescott Hall Butler was, as above described, taking pay from both sides. The unhallowed odor of this odoriferous state of affairs is not deodorized by showing that Evarts, Choate and Beaman were not—as I on knowledge and belief swear they were—legal counsel for "Bloomingdale" when Mr. P. H. Butler was appointed my committee; for from the theory of "community of interest," Mr. Butler, through his partner, Mr. Choate, was interested in the welfare of "Bloomingdale" and all that pertains to it, the latter being a "Governor" thereof.

He was therefore interested in the side of the aforesaid controversy from which—if Evarts, Choate and Beaman can prove that I am wrong in alleging on knowledge and belief that they were counsel for 'Bloomingdale" in 1899—he was therefore *interested in* the side of the aforesaid controversy from which he was *not* receiving pecuniary remuneration—"Bloomingdale"—and he was therefore *interested against* the side of the aforesaid controversy from which he *was* receiving pecuniary compensation—myself through my estate.

Mr. Butler, to my mind, was approaching imposition on the court in allowing his name to be presented for a position—the above—which are aforesaid circumstances of his indisputable membership in the firm of Evarts, Choate and Beaman, and Ambassador Choate's indisputable presence on the Board of "Governors" of "Bloomingdale" at one and the same time, which the aforesaid circumstances rendered untenable for a

lawyer of delicate feelings. or of even ordinary professional etiquette.

It will be observed that I make no charges against the late Prescott Hall Butler, which it would require resurrection to refute. Far from it. For that very reason—a reason of delicacy—I refrain from quoting a conversation had by me with the said Butler in my cell at "Bloomingdale" in August, 1899. As will be seen, I refrain from quoting therefrom in the slightest degree.

Immediately following Mr. Butler's demise in the late fall of 1901, one of his law partners, one T. T. Sherman, was appointed the "committee" of my person and estate; they evidently liked to keep my property in the legal family, so to speak. Everything that I have said against the propriety of the late P. H. Butler's allowing himself to be named as the legal protector of my property and person applies therefore with more or less the same force to the present alleged committee of my person and estate—the said T. T. Sherman. For though the hand of death has been heavy upon the now defunct firm of Evarts, Choate and Beaman, having removed therefrom Messrs. Evarts, Beaman and Butler, in startingly swift succession, and though Ambassador Choate is said to have retired from the relics of the former firm of Evarts. Choate and Beaman, yet from the said relics the firm of Evarts. Tracy and Sherman has arisen. What more likely than that they inherited the supposed mantle of the former firm in the shape of counsel for "Bloomingdale?" At all events "Bloomingdale" is knit to them by the ties of long professional friendship, as shown above, and therefore thoroughly unfits any member of the firm of Evarts, Tracy and Sherman from accepting with propriety the post which said T. T. Sherman did not hesitate to accept—to-wit: that of committee of my person and estate in the shoes of Prescott Hall Butler, deceased. Small wonder that I have had my hands full in shaking off two such committees of my person and estate as the above. Small wonder that P. H. Butler stuck until death removed him and T. T. Sherman, until with the help of the law I

eject him. The value of my estate being doubled, by a large legacy left me in the will of my grand-aunt, Mrs. Laura Astor Delano, last June, nothing short of the strong arm of the law, or death itself, could induce T. T. Sherman to turn it over to me. Whatever that gentleman lacks in delicacy there is no lack of knowledge on his part as to which side his bread is buttered, and fat committeeships do not come one's way every day.

So much for the two committees of my person and estate.

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"FOUR YEARS BEHIND THE BARS OF 'BLOOMINGDALE'"
(420-429; 475-476.)

BY COUNSEL FOR PLAINTIFF: Q. Mr. Chaloner, I hand you a volume entitled "Four Years Behind the Bars of Bloomingdale, or The Bankruptcy of Law in New York" and ask you to describe it and state by whom it was written.

A. This is a book I wrote and it was published in 1906. It was written specifically to protect a portion of my property in North Carolina—that portion of my property represented by stock in the Roanoke Rapids Power Company, from a raid at the hands of Winthrop Astor Chanler, Secretary of the said Company, or, at all events, an officer therein, and Wm. M. Habliston, at present President of the Virginia National Bank of Richmond, or some such bank, and the President then and now of the Roanoke Rapids Power Company. These gentlemen attempted to freeze me out, in good old cut-throat fashion, of my fat holdings in the said Roanoke Rapids Power Company. This will be touched on at another point in this deposition, and is fully described in the forewords of this book. This plot was foiled, and the publicity which I turned on the dark-lantern antics of Messrs. Habliston and Chanler frightened those gentry to such an extent that I saved every scrap, every share of my stock, and, marvelous to relate, those members of the Chanler family who own stock in said Company, namely, Messrs. Winthrop Astor Chanler, Robert Winthrop Chanler, Ex-Sheriff Bob, of matrimonial record, Mrs.

Elizabeth Chanler Chapman, wife of John J. Chapman, and Alida Beekman Chanler-Emmett, wife of Mr. Temple Emmett, a relative of Robert Emmett (blood relative), the Irish Patriot. That these gentlemen and ladies actually endorsed, if not all of them, at least some of them or some one of them—I not being in New York, don't pretend to know exactly; but I do know that my stock in a new paper-mill was guaranteed from all loss by one or more of the Chanler gang, and my stock in the Roanoke Rapids Power Company was left unmolested. That was the object of this book. It was to stop this raid, and the book achieved this object; the raid was "nipped in the bud." While I was at it I did not stop with nipping the raid in the bud, but I attacked the raid of the Chanler gang (I flag the Docs.—I use that expression because I choose to, and there is no legal penalty attached thereto). I determined to show up the raid of the Chanler gang on my property, on my liberty and, to all intents and purposes, on my life. This book of several hundred pages—400, more or less—has been reviewed. This is my history and it is my exhibit, showing that I am not talking through my hat when I said some time ago that I am going to devote my energies—a certain portion of my energies—to writing a history of my own times. The first essential of a history is truth; the second is clearness of diction. The first essential is necessary that people may know that it is history they are reading, and not lies. The second essential is necessary in order that it can be read; that the style will not act as a barrier between the historian and the reader. Regarding both said essentials I have received most flattering O. K.'s. The New York "World" reviewed this book twice, and spoke in the highest terms of it. The New York "Tribune" reviewed the book briefly and spoke in high terms of it. The Raleigh (N. C.) News and Observer reviewed it at length, several columns, and finally a reviewer of the Richmond Evening Journal, under date of June 16th, there or thereabouts, reviewed this book quite flatteringly and O. K.'d. specifically these two essentials, namely, truthfulness of me as a historian (he did not use that word), and my style

as a writer. My style at times becomes somewhat forceful, but not more forceful than Cicero's style in his oration against Catiline, and not more forceful than Lord McCauley; the great American historian Motley, and the great, recently dead, German historian Mommsen. I now read the article from the Richmond Evening Journal of April 16th, 1907:

TELLS WHY THEY SENT HIM TO AN ASYLUM.

John Armstrong Chanler's Strange Book, "Four Years Behind the Bars of Bloomingdale"—What Experts Say.

It is seldom, indeed, that one finds such strange—almost fantastic—reading as that included within the two black covers of John Armstrong Chanler's remarkable book, "Four Years Behind the Bars of Bloomingdale, or the Bankruptcy of Law in New York."

This volume, the publication of which has time and again been discussed in nearly all the newspapers of the country, is no figment of the author's fancy. It is based on facts, yet stranger facts ne'er were printed, and had the work been advertised as a mere romance, critics would have scoffed at its improbability.

The story of sane men being imprisoned behind the bars of lunatic asylums is nothing new. Charles Reade threshed out this subject many years ago, and following his story, "Hard Cash," came numerous newspaper controversies anent the treatment of the insane and the alleged insane.

"Documents in Evidence."

But in the Chanler volume we have something tangible—something definite—with all the "documents in evidence." In fact, the book, which the writer styles a "human document," is based entirely on court papers as follows: The New York proceedings in 1897 and

and 1899 and the proceedings in Virginia in 1901 and in North Carolina in 1905.

Apropos of "documents in Evidence," it may be well to say right here, that "Four Years Behind the Bars" is a wretchedly arranged book, which carries a good deal of superfluous matter in the way of notarial acknowledgments, clerks' certificates and legal verbosities.

Mr. Chanler started out at the outset with the determination not to ask his readers to take anything for granted, and so he presents every paper in duly authenticated form. In the case of so high-minded a gentleman, we would have been willing to accept his word in every instance and not to have required the proofs.

Some friends should have tackled his manuscript with an axe and chopped out all this useless verbiage, for it is a positive disadvantage to the volume, and will scare off many readers.

The author should have said his say in a concise preface, and then let the legal papers follow in the form of an appendix.

All this criticism, mark you, pertains to a defect which in no way involves Mr. Chanler's literary style. It is meant in the kindest spirit. and as an explanation to people, who otherwise might be scared off by what, at the first glance, looks like a very ponderous effort.

A Master Penman.

And now to come down to the heart of things: If the reader once gets the swing of the volume. he will find it weirdly, fascinatingly and entrancingly interesting, and what is more, he will quickly perceive that this so-called madman Chanler is a master penman—a man who is capable of expressing the most subtle ideas and the most delicate distinctions of thought in the choicest language.

The reader also will find himself borne swiftly along in the current of thought by a wondrous vocabulary, which flows as musically and with as swift a current as a mountain stream. At times. indeed, the stream grows turbulent and ebullient and fretful, but it is always clear, always masterful and always fascinating.

Apropos of all this. it may be said that Mr. Chanler owes his strange fate in life to these very qualities, and to his remarkable mind, whose febrile activity is so strikingly unusual that it has lead many people, doubtless in good faith. to mistake his eccentricities for symtoms of aberration. In short, the author, as one of the experts who examined him has said, first attracted attention and brought woe upon himself by having an intellect far in advance of most of his brethren.

It is not within the scope of this criticism to detail Chanler's life story. Suffice to say that he. the scion of wealthy and aristocratic forbears, was committtd to Bloomingdale Hospital, New York, in March, 1897, and detained there nearly four years. when he made his escape and hurried under an alias to Philadelphia, where, of his own volition, he remained six months under the supervision of alienists who pronounced him absolutely sane and entirely capable of managing his own affairs.

From the Quaker City the fugitive—for such he was in every respect—went to Lynchburg. where he remained several weeks under care of another alienist, and then he reappeared before the public gaze in Albemarle and instituted those court proceedings which focused so much attention upon him.

The Virginia courts, as well as those of North Carolina, made a thorough examination into the mental condition of Chanler and pronounced him sane. But the man is still "civiliter mortuus" in New York—that is, still legally a lunatic in that State, and he dare

not go there for fear of rearrest and a second period of confinement.

His Object in Writing.

Mr. Chanler's one object in life now appears to be the establishment, beyond a peradventure of a doubt, of the popular belief in his sanity. Incidentally he also desires to let the public know how badly he has been treated—or thinks he has been treated—by some of his kinspeople. For the most part, he lets other folk—witnesses, physicians, and lawyers—tell his story, though his own interpolated explanations lend special charm to the volume. The book at times is successively abusive, aggressive, ironical and savage towards those who, in the author's opinion, have done him wrong. It would hardly be fair to discuss this feature of it here. The thoughtful man undoubtedly will derive more pleasure from reading the splendidly written opinions of the many experts who have examined Mr. Chanler.

In June, 1897, while the author was confined in the asylum he surreptitiously prepared and sent to Captain Micajah Woods, the famous Charlottesville lawyer, a thirty-seven page letter, setting forth the facts leading up to his incarceration and pleading for help.

This communication is a masterpiece of English and withal so irresistibly interesting that no reader can lay it aside. In the letter Chanler goes into many details about his psychological and metaphysical studies—the researches which ultimately caused him so much trouble. The following paragraph is characteristic:

"I must tell you that for some years past I have been carrying on investigations in Esoteric Buddhism. You must not imagine from this that I am not a Christian, for I am a communicant in the Episcopal Church. My investigations were entirely scientific in their nature and totally free from any tinge of religion. They sup-

posed a state of mind open to impressions and free from prejudices."

Then he tells how Stanford White, his friend, and the man murdered by Harry Thaw. coaxed him from Virginia to New York, where he was seized and taken to the hospital.

A little later Chanler explains that sometime previous to this incident, his eyes had undergone a remarkable change of color. They had turned from brown to gray. It was his comments on this fact which led people to think that he was a victim of dementia.

In his letter to Captain Woods, he says apropos of this:

"At all events they were light brown. The extraneous and corroborative evidence of this fact is a description of Dering's eyes on page 39 of the latest edition of "The Quick or the Dead," which I enclose, having been sketched from me. I allude to the features, of course. the occurrences in the book being entirely imaginary. I have the Princess Troubetskoy's word for this; it is also a matter of almost common knowledge, the New York World having published an article on the Princess Troubetskoy in February. 1896, if I remember rightly, which quoted as descriptive of me the passage above referred to on page 39 of "The Quick or the Dead;" and the writer of the said article vouched for its correctness as a description of my personal appearance in the article itself.

"You will observe that Dering's eyes are described as the color of 'autumn pools in sunlight.' I need not say to a Virginian that the color of autumn pools in sunlight is brown—a sparkling or bright brown. The pools meant are the deep quiet places in the streams into which the dead leaves fall, covering the bottom and giving a dark brown appearance to the water, which is lightened or brightened when the sun plays upon the pool."

A footnote following this paragraph quotes an affidavit from the Princess Troubetskoy, which substantiates what the author says:

Automatic Writing.

The documents published in connection with the court proceedings, for the most part, give the views of expert alienists who examined Mr. Chanler. Here is what Joseph Jastrow, professor of psychology in the University of Wisconsin, says of the author: "Mr. C., according to his own account and in conformity with the evidence which had been submitted to me, exercises a form of automatic activity known as automatic writing, and by some writers called 'graphic automatism.'" He is able to produce, and apparently at almost any time at request, a form of writing in which his intentional and usual control and direction participate to a reduced extent, and may be almost absent. Such automatic writing is a well recognized phenomenon occurring not rarely, but yet unusually, and finds its place among a series of psychological activities, which are in a large part of a complex co-ordinated and reasoned type, but which are none the less not the intentional expression of the ordinary, fully conscious thought."

A Mediumistic Temperament.

Dr. William James, professor of psychology at Harvard, in his written opinion of the author, says, among other things:

"Mr. Chanler is evidently possessed of a strongly 'mediumistic' or 'psychic' temperament, but whereas most mediums promptly adopt the theory, current in spiritualistic circles, that these automatisms are due to spirit-control, Mr. Chanler, prepossessed against that hypothesis, appears to have set to work systematically (and as would appear from his narrative, critically), to

explore them and determine their significance for himself.

"In this attempt he seems to me to deserve nothing but praise. The only question is of the amount of judiciousness shown in allowing the subject to absorb him so continuously. The most injudicious act of which he is accused in the experiment with fire. As described, its motivation was rational and its results interesting, but moderately harmful. It seems to me a monstrous claim to say that a man may not make experiments, even as extreme as that, upon his own person, without putting his legal freedom in jeopardy. The Napoleon experiment (going off into a trance-like state), falls strictly within the limits of praiseworthy research."

Answers Other Side.

Other alienists of equal fame and ability as those quoted have also submitted their views as to Mr. Chanler's condition. and all these appear in full in the volume, but their opinions cannot be given here.

Suffice it to say that the author produces a powerful array of authorities to show that he has been unjustly dealt with.

Nor does he flinch at presenting the other side of the case, too. The reader is allowed to peruse the testimony of those who thought that Mr. Chanler should be confined in Bloomingdale. This evidence is discussed by the author with a power of analysis which could not be surpassed, and a degree of acrimony which shows how bitterly he resents the course of those who thought him "non compos mentis."

As one goes deeper and deeper into the strange volume, which has no parallel in literature, one finds himself thoroughly engrossed with the unusual subject-matter, and almost from the start the reader's sympathy is insensibly drawn towards Mr. Chanler. Truly he

is one man in a million, while his life-story is little short of thrilling. But after all. it is the wide scholarship of the author which makes him command attention and adds luster to his every paragraph.

As the volume contains certain passages wherein Mr. Chanler's indignation seemingly makes him almost libellous, the book will not be handled by any of the Richmond houses. It can, however, be procured by writing to the Palmetto Press. Roanoke Rapids, N. C. Those who wish to burn the midnight oil over something unique, should get it."

"EVAN R. CHESTERMAN."

BY COUNSEL FOR PLAINTIFF: Q. Mr. Chaloner, will you kindly state what you desire to put in at this time as an exhibit?

A. I want this critique, which I have just read, from the Richmond Evening Journal, put in, and my book "Four Years Behind the Bars,"which is obtainable at G. P. Putmans' Sons, New York. It is on sale there and an unmarked copy can be obtained at the time this case comes to trial, if not put in before. I do not desire this copy put in, that I have read from, because it has marginal notes made by me. it being one of the first copies of the book I ever saw and bears my marginal notes in it; so, Mr. Ware, if you will kindly word that so that the book goes in in spirit and its essence can be supplied by putting it in in substance later.

BY COUNSEL FOR PLAINTIFF: We at this time file the critique from the Richmond Evening Journal, dated April 16th, 1907, which has just been read by Mr. Chanler, and also file a copy of the book "Four Years Behind the Bars" in its entirety as an exhibit in this case, and ask that the same be marked for identification and be made a part of the evidence in this case.

The said critique from the Richmond Evening Journal is marked "Plaintiff's Exhibit 51". And the copy of the book

"Four Years Behind the Bars", which is offered in its entirety, is marked "Plaintiff's Exhibit 52".

BY COUNSEL FOR DEFENDANT: We except to the criticism as hearsay, and to the introduction of the book as irrelevant and cumbering the testimony.

* * * * * * *

BY WITNESS: I now wish to file a critique in the New York Sunday World of November 11th, 1906, on "Four Years Behind the Bars" or what is known as a "Broadside", by which is meant it takes a whole sheet, entitled "Stop Thief. Give Me My Million", as well as file a copy of the Raleigh, North Carolina, News and Observer, of October 18th, 1906, which criticizes favorably, as did the World, "Four Years Behind the Bars", under the title, "Four Years in Bloomingdale—John Armstrong Chanler's Book on Detention as a Lunatic." I shall simply excerpt half a dozen lines from the New York World, now about to be put in evidence, and from the News and Observer only two, that from the New York World is as follows:

> "One may search fiqtion high and low for a case like this one in real life. It is one of the most remarkable stories of modern times. Here is a man of independent means, a man of affairs, a brilliant writer, an ardent sportsman and clever raconteur, sent to Bloomingdale, adjudged hopelessly insane, "progressive", the physicians call his case".

and from the News and Observer read the following:

> "Readers of the News and Observer will recall the mysterious sensation occasioned ten years ago by the incarceration in Bloomingdale Asylum, in New York, and the subsequent escape of John Armstrong

Chanler, the wealthy Virginian and member of the New York Bar

"His story is fraught with romance and mystery.

AUTHOR OF DISTINGUISHED ANCESTRY.

As stated, Mr Chanler is a citizen of Virginia, where he still resides at his four hundred acre estate, "Merry Mills". He is a mixture of distinguished Southern and Dutch ancestry, and his blood is such as to warrant that he will make an unrelenting fight for what he conceives to be his rights and against injustice. His parental grandfather, a personal friend of Calhoun, left Charleston, South Carolina, where his forebears had steadily resided since about 1710 when they first left Wales for the New World, about 20 years before the war between the States, came to New York to live and married into the New York branch of the Winthrop family. The first of that family to come to this country was John Winthrop, first Governor of Massachusettes. This marriage also connected the Chanlers with Peter Stuyvesant, the last Dutch Governor of New Amsterdam, now New York. In Charleston, the Chanlers had always been members of one of the three learned professions, 'the Church, the Law, or Medicine".

BY COUNSEL FOR DEFENDANT: All of the above answer, both in yesterday and today's deposition and the filing of the exhibits mentioned therein, is excepted to as irrelevant, argumentative and as introducing statements of other parties not germane to the issue, or not legal evidence in any aspect of this case.

BY COUNSEL FOR PLAINTIFF: Q. Mr. Chaloner, in connection with your literary work I hand you a paper and ask you to describe its contents and state to what it refers?

A. This is a printed list of critiques of five American Law Reviews on a book I wrote, entitled "The Lunacy Law of the World". The original of these will be handed in as soon as Mr. Money comes in and gets them out of my box.

(The witness then read these critiques in the following words and figures, to-wit:)

WHAT THE LAW REVIEWS HAVE TO SAY ABOUT "THE LUNACY LAW OF THE WORLD," BY J. A. CHALONER.

NORTHEASTERN REPORTER.
St. Paul, Minn., July, 1907.

"The Palmetto Press, Roanoke Rapids, N. C., has printed a book on "The Lunacy Law of the World," by J. A. Chaloner, of the same place. It is an examination of the laws of each of the States and Territories, and of the Six Great Powers of Europe, on this subject, and is in terms a very severe arraignment of most of them. It would appear that the iniquitous system against which Charles Reade waged war has by no means disappeared. People may still be incarcerated in insane asylums without notice, and without an opportunity to be heard, either in person or by attorney; and once in an asylum, a patient has little protection against the keepers. They may be wise and kind, but the instances of cruelty which occasionally reach the public indicate that this is not a

safe assumption. *Mr. Chaloner holds a brief for the accused, and puts his case very strongly, but, in view of the cases he cites, it would be impossible to state the matter too strongly.* He says:

'A survey of the field of Lunacy Legislation the world over presents today an appalling spectacle. It affords, to put it mildly, the strongest card in favor of anarchy—of no law—ever laid upon the table of world-politics; and throws into lamentable relief the fact that in about forty per cent of the States and Territories of the United States neither the Bench—with many honorable exceptions—the Bar nor the Legislature, can be entrusted with safeguarding that fundamental principle of liberty, the absolute right of the individual.'

The book should awaken public interest in an important matter."

THE OHIO LAW BULLETIN.

Norwalk, Ohio, July 29, 1907.

"Chaloner, Lunacy Law of the World.

A criticism of the practice of adjudging persons incompetent and depriving them of their liberties without due process of law, fortified by decisions of the courts, is the theme upon which the author has developed this interesting and instructive work. The lunacy law of all the States of the Union and six of the Great Powers of Europe are reviewed, and surprising as it may seem, nearly half of the States and Great Britain fail to require notice of the inqui-

sition to be given the alleged lunatic or incompetent, twenty-four of the States and Germany and Great Britain fail to afford him opportunity to appear and be heard. *The author makes it conclusively appear that there is needed revision of these laws.* Edited by J. A. Chaloner, counsellor at law. Published by the Palmetto Press, Roanoke Rapids, N. C."

THE OKLAHOMA LAW JOURNAL.

Guthrie, Oklahoma, September, 1907.

"The Lunacy Law of the World.
By J. A. Chaloner.
Published by the Palmetto Press,
Roanoke Rapids, N. C.

This is a volume of nearly four hundred pages, well printed, but bound in paper covers—a point always detrimental to the sale as well as the dignity of a law book.—However, *when the contents are carefully read and reflected upon, it is found one of the best and most needed books that has appeared for many years.*

The subject of Lunacy Law in spite of all the legislation we have had in other departments, has received little attention. In fact, it is little better than when Charles Reade wrote his book entitled 'Hard Cash'. The fact that many mentally deranged persons are incapable of comprehending the nature of the steps taken to place them in custody, the custom has become so prevalent that no process is needed to place them on trial as to their sanity. It is to be remembered that in every State of the Union, and in

fact, in every country of the world, fraud has been perpetrated on men and women of means by greedy relatives and the unfortunate ones placed in asylums for no other purpose than to secure control of their property. And further it should be remembered that one once adjudged insane if he cannot secure a hearing of his right to restoration through the influence of true friends he is forever barred of the right to be heard. He has lost the standing of a citizen. *There is much in Mr. Chaloner's book that should be well studied by every lawyer and legislator as to what should be done to secure the constitutional rights of every one alleged to be of unsound mind.* The book carefully goes over the law of lunacy in the forty-five States and Territories as well as that of the leading nations of Europe.

LANCASTER LAW REVIEW.

Lancaster, Pa., September 30, 1907.

"The Lunacy Law of the World."
By J. A. Chaloner, Counsellor at Law,
Palmetto Press, Roanoke Rapids, N. C.

The work is a review of the lunacy laws of the States and Territories of this country together with those of Great Britain, France, Italy, Germany, Austria and Russia, with a view of showing their defects mainly in regard to affording proper protection to the alleged lunatic.

To those of us who have been accustomed to look with complacency on our lunacy laws, remembering how lunatics were thrown into dungeons and chained and

tortured but a short time ago, this book brings home some startling truths. .It shows clearly the dangers of that class of legislation in force in England and many of our States (as our own Act of April 20, 1869, *P. L.* 78) *which permits an alleged lunatic to be incarcerated upon the certificate of two or more reputable physicians.*

The author contends that in lunacy proceedings notice to the alleged lunatic ought to be absolutely essential and that the trial should be by jury in the presence of the alleged lunatic; that any other practice is a violation of his constitutional rights and dangerous, in that it might be used by designing relatives for fraudulent purposes.

The importance of a jury trial in such cases has been recognized by Judge Brewster in Com. ex rel. vs. Kirkbride, 2 *Brewster,* 402. *The writ of habeas corpus is not a sufficient safeguard.*

In setting forth the importance of allowing the alleged lunatic an opportunity to appear, the author says:

'The test of sanity is a mental test wholly within the power of the accused to accomplish and without any witnesses, professional or lay, to back him up. Suppose two paid experts in insanity, in the pay of the other side, swear that the defendant cannot tell what his past history has been—that said defendant's mind is a total blank upon the subject. Would that professional and paid and interested oath stand against the defendant's refutation thereof by taking the stand and promptly and lucidly giving his past history, provided he were afforded his legal privilege of taking the stand in place of being kept away from court and having to allow his liberty and property to be perjured away from him in his enforced absence ' (Page 217.)

Collusion would be very difficult to prove. It has been held that no presumption arises from the fact that the parties certifying to the alleged insanity were in fact mistaken. Williams vs. Le Bar, 141 Pa. 149.

The subject is an important and interesting one, and the book shows extensive and careful research. It is carefully written and carries conviction.

LAW NOTES.

Northport, New York, September, 1907.

"The Lunacy Law of the World.
By J. A. Chaloner, Palmetto Press.
Roanoke Rapids, North Carolina, 1906. Pages 348.

The writer is assuredly earnest * * * setting forth the unquestionable abuses to which the state of the lunacy laws has given rise.

The exhaustiveness of his research into the question compels admiration, an author who can work through lunacy law from the time of the Emperor Conrad down to the present."

PALMETTO PRESS, Roanoke Rapids, North Carolina.
Bound in Law Buckram; FIVE DOLLARS,
delivered on receipt of price.

BY COUNSEL FOR PLAINTIFF: I now file the list of critiques which Mr. Chaloner has just read, and ask that they be marked for identification and be made a part of the evidence in this case.

Said exhibit is marked "Plaintiff's Exhibit No. 48". The original publications from which this list was copied are also filed with the list, viz.: Northwestern Reporter, July 26, 1907; The Ohio Law Bulletin, July 29, 1907; The Oklahoma Law Journal, September 30, 1907, and the Lancaster Law Review, September 30, 1907, which also contains a typewritten copy of "Law Notes", Northport, New York, September, 1907. Each of these publications is marked "Plaintiff's Exhibit No. 48" in accordance with the marking of the above list.

BY COUNSEL FOR DEFENDANT: The above question and answer, and the exhibits therewith filed, are excepted to as irrelevant.

BY WITNESS: The criticism of my book. "The Lunacy Law of the World", by these law reviews indicate that a needed reform should take place in that section of the law known as lunacy legislation, and so soon as I get my property I shall devote myself to the straightening out of the said crooked laws by visiting. when in session, the legislatures of every State in the Union, from the Atlantic to the Pacific. from Canada to the Gulf. that is besmirched and degraded by the domination of illegal lunacy laws. I am perfectly convinced of ultimate success on the strength of the truth on my side—the truth of this book as vouchsafed by the said learned legal reviews, and I am perfectly confident therefore of success so soon as the representatives of the people know that they are under illegal laws, and that they will hasten to render them legal. There is nothing in this for me in any sense of the word. The sale of a law book to a man with an income of between $50,000 and $60.000 a year, and with every prospect of its increasing on account of the increasing value of real estate in New York, is nothing. This shows that I am not hankering after the sale of a law book. I am not after the money in any sense whatever. The

first edition of this book was seventy-five copies. It was asked for by one of the leading law publication concerns and some of the leading jurists of the country and I have not been able to supply the requests for the book. I did not have money enough to bring out more than seventy-five copies of these law books at the time. These books were sent to some few leading jurists and the leading law libraries, such as the Library of the Supreme Court of the United States, the Congressional Library and the State Library at Albany, N. Y. and I got a letter of thanks from the librarian of the State Library at Albany, saying that he was very proud to receive it, that it saved him the expense of buying the book, as he had instituted an offer through a Baltimore firm to buy this book for the State Law Library at Albany. I also sent this book to the Ministers of Justice of the following Great Powers and received thanks and flattering comments from them: The Ministers of Justice of Russia, Austria, Germany, Italy and France; all of them wrote me letters signed by themselves, thanking me for the book and making flattering comments, with the exception of France, and the reason why no comment was made there was that in France (I lived there five years and know the characteristics of that great people) they are a little bit jealous of the stranger, and they don't want tips from a stranger, and the Minister of Justice of France resented my having criticized the lunacy laws of France as illegal, in Chaloner on Lunacy; but he was the only one of the Ministers of Justice of the Great Powers of Europe that did not send a polite and even flattering reply. He received it, because I sent it registered, which I always do when I am sending anything of the kind to a lawyer, otherwise I would not know whether they received it or not. If there happens to be a crooked legislature in session, either a crooked Republican Legislature or a crooked Democratic Legislature, I shall "ride the fence", as the sporting phrase is. In other words, I shall not expect to win before this said legislature, but shall content myself

by going on record as having failed to win before the said legislature, and then shall go to the people, shall institute a campaign throughout the State so that the next legislature that is elected shall not be a crooked legislature at all events. I can go to the people as proved by my success in having gotten seven thousand backers for my monthly newspaper "The Confederacy and The Solid South", spread over eighty odd counties out of one hundred counties in the State of Virginia, of all the counties practically, bar the mountain counties. I sent it to the mountain counties, but got no reply from them for the reason that the worthy mountaineers have never yet seen an automobile; they may have read of them but have never seen them, and some of them were afraid they would lose their farms if they signed a petition against the automobile. They were afraid to sign the petition, so they abstained from joining in this movement for the protection of the automobile law in Virginia. I mention that, not to pat myself on the back, but in order to show that I had not bit off more than I can chew by saying that if a crooked legislature dares to defend the crooked lunacy laws now obtaining in nearly fifty per cent of the States of this great Union, I shall "Go to the country" (an English expression in politics, which means go to the people—go to the electors), and let them know where they stand and what their servants are on strike about (so to speak) at the capital, and get the electors to send men who will obey the wishes of the electors and who will act in accordance with the wishes of the electors and take down the sword of Damocles which hangs now suspended by a hair over the head of every elector and every citizen and sojourner and stranger and every man and woman, white and colored, in fifty per cent of the States of this vast Republic. A shocking, and infernal, a diabolical state of affairs, enough to disgust a lawyer beyond the reach of language admissable in a law court to express his disgust and contempt at such a filthy state of affairs in the temple of justice of fifty per cent of the States of the Republic found-

ed by George Washington and his contemporaries. This is a rule of Hell on earth, nothing short of i , in fifty per cent of the so-called law-abiding States of this Union. I can show that I can "Go to the Country", that I can organize the voters as I organized them to support me in getting up a petition for the protection of the Virginia automobile laws second to none in the world for safety to the poor man and woman. As I organized the State of Virginia, so I can organize say, the State of Pennsylvania, where the laws are vile, or the State of South Carolina, or the State of North Carolina, or, be it said in a whisper, the State of Virginia whose laws are not better than they ought to be in that line, and I look forward to some particularly busy years in cleaning the "Augean Stables" of lunacy legislation—twenty-five stalwart stables stinking aloft in twenty-five States of the United States of America. This herculean task I shall carry out in accordance with my said 'Hannibal oath lodged in "Bloomingdale" in the summer of 1897 on the margin of Stormonth's unabridged dictionary. I will be carrying out a plan that I laid down nearly fifteen years ago. I am carrying out it out with no political ends, for it is apropos for me to say here now that there is nothing in politics I want. I want go on record to that effect. I served with the late William Collins Whitney, the former Ex-Secretary of the Navy in Cleveland's Cabinet, on his private committee at the Hoffman House in New York City, the usual National headquarters of the Democratic party in New York. Mr. Whitney had a suite of parlors there, and I served there with Major Barbour, formerly of the United States Army, with a paid clerk; we were not paid, of course, our services were gratuitous. We were there as a committee to receive the big men of the Democratic party from all over the nation. There were several parlors one after the other, and Mr. Whitney, after we had received these men and let him know that they had arrived, would frequently take them to one or the other of these different rooms. This committee was the business

committee of the National Democratic Committee—it was the money raising committee, and nobody without money or great political power ever crossed the threshold of my parlor (I say "my" in the sense of it being one of the parlors that I held down chairs in from August until the election in November, with a brief recess in September, 1892). The campaign was a great success. After that Mr. Whitney asked me if I wanted anything—if I wanted any return for my services. I said I did not, I want nothing. I mention this to show that I have no political ambitions, and that this work I am doing is *pro bono publico*: is not for money, not for fame; it is for no ends of my own. I am wrapped up heart and soul, mind and body in the reformation of the lunacy laws of the United States, and not only of the United States, but of Europe, as is shown by this book, "The Lunacy Law of the World"—I am as familiar with the lunacy laws of Great Britain, of France, of Germany, of Italy, of Austria-Hungary and of Russia as I am with those of New York State, and they are as rotten, nearly all of them, as they are in New York—no, they are not as rotten as those of New York, with the exception of England—strange to relate—the home of Blackstone—which is as rotten today in its lunacy laws as my former home on Manhattan Island, my birthplace. I state this so as to prevent lies and perjury on the part of some of the doctors and lawyers engaged on the other side, in New York when this case is reached, so they can't say I am doing this for fame, or doing it to sell my law book, for I say it is absurd that a man with $50,000 a year is going to resort to such methods to sell a book or to gain fame. I took nothing when after service with the leaders in a great successful national political campaign; I was asked what I wanted—and therefore I say this is a fair indication that I am not seeking for fame or political honors, or to sell my book, for I am not. Therefore my motives are absolutely pure. I am not arguing on the stand when I say that I maintain that my motives are absolutely pure,

they are simply those of a man, a law writer who wants to have good laws instead of crooked ones. People have asked me, those who know how hard I have worked over this case for fifteen years come the 13th of next March (for I began to work on this case the moment I was in "Bloomingdale", although I had no books to work on except a dictionary, containing the Constitution of the United States in the back and a list of legal maxims)—people have asked me "What will you do when get done fighting this case; won't you feel lonesome? I said "No, far from lonesome, for I have got fifty per cent of the States of this Great Union to visit and straighten out". I wish to God I did not. I am getting to be an old man, I am in my fiftieth year, and I would rather like to take a holiday after my fifteen years of sweat and blood and imprisonment and legal war, but I am not going to do it. I am not going to take any holiday for two years after I obtain my property. I am going to spend two winters in visiting the various legislatures aforesaid. Fortunately for me they do not all meet the same year, and I can divide them up into say, two sections, that I have to visit, and take twelve one winter and the other twelve the following winter, and that is my life work, and I have left in my will instructions that my residuary legatees, the Universities of Virginia and of North Carolina, keep "The Lunacy Law of the World" up to date as a bulwark of liberty of the American people, so far as what is called by Blackstone the "absolute rights of the individual" are concerned, and that they shall be safeguarded by this book of which new editions will be issued and for the editing of which a lawyer is to be retained and his expenses paid, and the legislatures of the forty-eight States and Territories of the United States are to be watched by that lawyer for any illegal laws, and whenever a crooked law is attempted to be passed by a crooked legislature, that law is going to be nailed and attacked by the next edition of "Chaloner on Lunacy", and the tocsin and a general alarm to be sent out to the people of that State to watch

that they are not "run in" by bogus lunacy laws before the said "Chaloner on Lunacy Laws" represented by the man who will be editing it, has brought out a new edition, and the danger to the people who live in the State, as before the people of the State have been warned by being able to read in the new edition of the book of their danger, extracts thereof are to be sent out before the regular edition is published. In other words, I am mobolized against crooked legislation, especially legislation touching lunacy and the absolute rights of the individual, on which branch of the law I claim to be an expert, and point to "Chaloner on Lunacy" which is founded thereon, which laws I have gotten from the foundation head, that pure fountain. "Blackstone's Commentaries". I sat at the feet of that great teacher of law, Timothy Dwight, the founder of the law school of the University of Columbia, and from his lips I imbibed the waters of life —of the absolute rights of the individual handed down by Blackstone, and that is what I intend to devote myself to principally, for the rest of my natural life, and I shall go on being mobilized and fighting after death, represented by this book under the support of the great Universities of Virginia and North Carolina, supported in turn by the great States of Virginia and North Carolina, backed by money which I leave to the said Universities, who will hire a jurist who will keep this book up to date. I now am a law writer of record—not a bad state of affairs for an incompetent person, incompetent by cause of lunacy alleged, and this book has received the encomiums of these professional journals and therefore is beyond cavil or hostile criticism. That is my life work; the question of my friends who want to know what I shall do after I finish my case and get my money, is answered, and I hope I shall hear no more of it. I don't mean to say that I shall do nothing else, but this is my principal aim in life. I was forced to defend my own rights and while I am doing that I said I was going to defend the rights of all other men and women in this land.

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Pages 213 to 228 Omitted.

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Pages 213 to 228 omitted.

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PLAINTIFF'S LETTER TO CAPTAIN WOODS, OF JULY 3, 1897, AND REPLY THERETO, 175-205.

By Counsel for Plaintiff: Q. Mr. Chaloner, I hand you a volume entitled "Four Years Behind the Bars of Bloomingdale, or the Bankruptcy of Law in New York, by John Armstrong Chanler, A. B., A. M., Member of the Bar of New York," and point out page 81 of that volume and ask you to

read and describe what appears on the pages beginning on page 81 and ending at the end of the article which is therein contained?

A. This letter is printed from a copy of the original letter, and the caption of the case in which it is exhibited or is offered as an exhibit, appears on this page (to be strictly accurate), before what appears in the letter itself. I say this to explain the apparent, but apparent only, discrepancy between the original and this. This contains the following caption: "Circuit Court of the United States, for the Southern District of New York. John Armstrong Chanler, Plaintiff, against Thomas T. Sherman, Defendant," whereas the original letter did not contain that. I will state that what appears in the letter begins with "The Society of the New York Hospital, White Plains, New York, July 3rd, 1897, etc." This is a printed copy of the letter in this book, which I wrote from my cell in "Bloomingdale," July 3rd, 1897. The letter is already on file in this case, having been offered in evidence in the former part of these depositions taken in October, 1908, but it has not been read, and I now desire to read it:

The witness then proceeds to read said letter, in the words and figures, as follows, to-wit:

The Society of the New York Hospital,
White Plains,
New York,
July 3d, 1907.

Hon. Micajah Woods,
Commonwealth's Attorney,
Charlottesville,
Virginia.

My Dear Captain: You will possibly be surprised to hear that I am not abroad, as is generally thought; but am confined without due process of law, in a New York private Insane Asylum, whither I was brought by force against

my expressed will; having been arrested by two officers in plain clothes on an order from a Judge of the Supreme Court of the State of New York.

You will pardon the length of this letter when I say that I wish to employ you as assistant counsel in co-operation with Senator John W. Daniel, as leading counsel, in a habeas corpus proceedings which I wish instituted without delay.

I enclose a certified copy of my Commitment Papers, which I suggest that you defer reading until you have finished this letter, as they are a tissue of perjuries from beginning to end, and this letter will point out and prove the said perjuries in their order.

Before going into the Commitment Papers I shall give you a short account of what led to my present predicament.

I have been on unfriendly terms with my family—my brothers and sisters—for a long time.

It is not necessary to go into the causes which led to this state of affairs, except to say that they are partly business and partly temperamental. The line of demarcation began nine years ago and has gradually extended ever since. The climax of unpleasantness was reached last October. My youngest sister was then married, and I was to have "given her away." Ill health prevented my presence at the wedding. I had been confined to my bed in my home, "The Merry Mills," Cobham, Albemarle County, Virginia, for several days before its date, and was in bed at the time. The wedding took place at my sister's home on the Hudson River. I sent a note by a special messenger, explaining my inability to be present, and also bearing a handsome present from myself to the bride.

The messenger arrived at my sister's home the day before the wedding. As there were four other brothers of the bride present at the wedding, I felt that my absence would throw no difficulty in the way of "giving her away."

It seems that my absence from that wedding was one

of the main causes of my present incarceration in a madhouse.

About a month later one of my sisters—with whom I was on better terms than with my other brothers and sisters—while lunching with me during one of my business trips to New York, said touching my absence from the wedding, that the family, including my brothers and sisters, were not put out at my absence from the wedding—they simply considered me crazy.

I did not pay much attention to this—thinking it a species of joke, to which I had grown accustomed from years of hearing. For whenever, in the course of an argument with any of my brothers or sisters I said anything which they found difficult to combat, their usual reply was, "You're crazy."

You must excuse my touching upon such a seemingly unimportant matter, but in crime nothing is unimportant, and you will see before finishing this letter that a crime has been committed against the liberty and the reason of a citizen of the sovereign State of Virginia—myself.

The next complication of the already severely strained relations between "the family" and myself occurred in December last. I was still detained in New York on the business trip before alluded to. At a Directors' Meeting of the Roanoke Rapids Power Co., of Roanoke Rapids, North Carolina, held in New York last December, a most violent altercation arose between my brother, Mr. Winthrop Astor Chanler and myself. The upshot of it was that he wrote me a letter next day refusing to speak to me or to have any further communication with me except in writing or through third parties. As this brother had struck me some years ago, and had quarrelled violently with me frequently since, the above communication did not surprise me. Mr. Winthrop Astor Chanler is one year my junior, and was director with me in the United Industrial Company.

I accepted his proposition and sent a representative next day to say to him that I did so. I also notified him that I

should send a representative to go over the books of my father's estate, of which he was an executor. This estate has furnished but two accountings in ten years. I do not suspect my brothers of wilful mismanagement, but I do suspect the lawyers whom they employ to do the work of investment, etc., for them, of investments which are more to their own interests than that of the said estate. My brother agreed to my proposition and I thought no more about it.

About this time I returned to my home in Virginia. I had arranged my business affairs before leaving so as to allow me to take at least two months rest.

I must tell you that for some years I have been carrying on investigations in Esot[illegible]ddhism. You must not imagine from this that I am not a Christian; for I am a communicant in the Episcopal Church.

My investigations were entirely scientific in their nature and totally free from any tinge of religion. They supposed a state of mind open to impressions and free from prejudices. I am not going to bore you with a lecture on Esoteric Buddhism, and shall dismiss the subject. In the latter part of February last I received a telegram from my friend, Mr. Stanford White, proposing to visit me in company with a mutual friend. As I was on rather unfriendly terms with Mr. White at the time, owing to an abusive letter he had recently written me, I did not look forward to a visit from him with pleasure. I therefore sent him a telegram to say that I was not well enough to see him. A few days later Mr. White walked in on me in company with a physician. I shall not attempt to picture my surprise. Let it suffice to say that I was struck dumb.

Mr. White hastily excused his intrusion and implored me to accompany him to New York for a "plunge in the metropolitan whirl." As I had some business which needed my attention in New York I consented.

I stopped at the Hotel Kensington, 15th Street and 5th Avenue, where I have been in the habit of putting up on my business trips to New York. A day or so after my arrival,

and while immersed in my business affairs, the physician who had accompanied Mr. White to "The Merry Mills" presented himself in my rooms followed by a stranger, whom he introduced as an oculist.

The reason he gave for breaking in on my privacy was the intense desire on the part of his friend, the Oculist, to examine my eyes.

I might say here incidentally that during my rest at home in Virginia my eyes had undergone rather a remarkable change. Their color having changed from brown to gray. I shall resume that subject later, and shall merely say that after criticising Dr. E. F., the physician who had accompanied Mr. White to my home in Virginia, rather severely for bringing a stranger into my rooms without asking permission, I allowed Dr. Moses Allen Starr, the Oculist, to examine my eyes. Dr. Starr took a lens from his pocket and asking me to go to the light examined my eyes attentively, he unhesitatingly pronounced them gray in color.

I may as well re-open the subject of the change of color of my eyes.

You may have noticed that my eyes were light brown. I say "may have" for that assumes two things; first, that you are free from that not unusual affection, color blindness: second, that you have the rather unusual powers of observation demanded by my assumption that you noticed my eyes at all.

At all events they were light brown. The extraneous and corroborative evidence of this fact is the description of Dering's eyes, on page 39 of the latest edition of "The Quick or the Dead," which I enclose, having been sketched from me. I allude to the features of course, the occurrences in the book being entirely imaginary. I have the Princess Troubetskoy's word for this: It is also a matter of almost common knowledge: The New York "World" having published an article on the Princess Tronbetzroy, in February, 1896—if I remember rightly—which quoted as descriptive of me the passage above referred to on page 39 of "The Quick or

The Dead;" and the writer of the said article vouched for its correctness as a description of my personal appearance, in the article itself. You will observe that Dering's eyes are described as "the color of Autumn pools in sunlight." I need not say to a Virginian that the color of Autumn pools in sunlight is brown, a sparkling or bright brown. The pools meant are the deep quiet places in streams into which the dead leaves fall covering the bottom and giving a dark brown appearance to the water, which is lightened or brightened when the sun plays upon the pool.

So much for what the color of my eyes was before they changed. Their color now is dark gray. As authority for this statement I have the testimony of every physician who has examined them—and there have been three—besides that of subordinates in this establishment whose opinion, as to the color of my eyes, I have asked. You must excuse my dilating upon so seemingly unimportant a subject as the color of my eyes; but I assure you it is far from unimportant in this case, for the first count in the indictment against my reason, in the Commitment Papers, made by the "Medical Examiners in Lunacy," is to the effect that I am insane because I say that my eyes have changed color; both said Medical Examiners in Lunacy having freely admitted that my eyes are undeniably gray. Apparently they hope to prove that gray has always been the color of my eyes.

The next step in the proceedings was a nocturnal visit from Dr. Moses Allen Starr, the Oculist, accompanied by another doctor, whom I had never seen, and two unknown men. Dr. Starr pushed his way into my rooms followed by the strange doctor unannounced. The two unknown men remained outside of my door. He then briefly informed me that he (Dr. Starr) was a Professor of Nervous Diseases in a New York College and that I was insane. He went on to say that he had come to take me away—he omitted to state where—immediately—that I must get up at once (I was in bed at the time), that resistance on my part would be useless as there was another doctor—the said strange doctor—in the

next room besides two other men—the said unknown men—outside my door.

It is not necessary to repeat my reply. I shall simply say that I very quietly, but at the same time effectively, refused to obey Dr. Starr's orders. I finally succeeded in convincing Dr. Starr without the slightest show of force that he had not brought enough men with him to carry me off that night.

The next afternoon two policemen, in plain clothes, presented themselves at my hotel with the Commitment Papers, a certified copy of which I enclose. I accompanied them without unnecessary discussion to this Private Insane Asylum.

Before going into the Commitment Papers, I shall briefly touch on my life here for the past four months. I was brought here the 13th of March. Since that time I have been kept in solitary confinement, in a two-roomed cell. A keeper sleeps in one of the rooms of my cell, and he is always with me. When I take exercise in the Asylum grounds the keeper accompanies me. My razors were seized on the ground that it was "a rule of the Institution." The consequence was that I had to be shaved by the Asylum barber, which caused me not only inconvenience but hardship, since my beard is thick and my skin is thin and no barber has been able to shave me without causing a violent irritation of the skin, a condition which is always absent when I shave myself.

You must excuse the above apparently trivial incident, but you will appreciate the annoyance it is to be shaved by the Asylum barber, when I tell you, that his shaving raised such a rash on my neck that I have limited his operations to twice a week; thus giving the inflammation time to subside—to begin afresh on the next shave.

You know, from my having had the pleasure of dining at your house, that I am limited to a very abstemious diet, that I am practically a vegetarian.

You also probably know that I ride a great deal on horseback. It is, in fact, my favorite and only form of outdoor exercise. You can well imagine the deleterious effect

upon my health, resultant from a combination of bad cooking, poor food and total deprivation of horseback exercise. Of the cooking I shall simply say that the Asylum cooks cannot even bake bread, though they daily attempt it. So I have been forced to buy crackers to avoid the violent indigestion the half-baked bread causes me. Of the food I shall simply say: that it has been so bad that I have come down to a daily diet of baked potatoes, lettuce, fruit and crackers in order to avoid eating food which is badly cooked, adulterated or decayed.

In the meantime I am living in a Madhouse. Every "patient" in the building in which I am imprisoned is hopelessly insane. At times some of them become violently, homicidally, insane, when, after yells and struggles with keepers, and a siege in a straight-jacket, they are forcibly removed to another ward. Since my arrival two patients were removed from this building for having become "violent," as they call it here.

Nothing prevents a patient from becoming homicidally insane at any time. In one of such fits of frenzy the lunatic might take it into his head to walk into my cell and attack me. The cell doors are unlocked, and although there is a keeper on watch on my floor, he is not always there. To give me warning of the approach of prowling maniacs I put a table against my door at night.

This will give you an idea of my surroundings. I think that you will agree with me that they are calculated to drive a man insane. When you add to these "surroundings" the active and sustained efforts of the resident doctors to talk me into becoming insane by declaring to my face that I am insane, and attempting to argue me into admitting that I am; when you consider this, you will, I think, conclude that I have my nerves and will-power under effective control in being able to remain sane.

So much for my life for the last four months. This is the first opportunity which I have had for posting a letter unbeknown to the authorities here. The rule is that all letters

and telegrams must be sent through the authorities here, who have the right to suppress or forward to "The Commission in Lunacy" at Albany, who have again the legal right to suppress and destroy them. You can readily understand that I would not send a letter under such conditions. Hence my having to wait four months to write to you and ask your aid.

The next thing to be considered is the Commitment Papers. I shall only touch upon that briefly for it speaks for itself.

In the first place the Commitment Papers give my residence as "Hotel Kensington, New York City." This is false, as my residence since 1895 has been "The Merry Mills," Cobham, Albemarle County, Virginia. Trow's Directory of New York City gives my residence Virginia. In Trow's Directory for July, 1896, to July, 1897, you will find "J. A. Chanler, Lawyer, 120 Broadway, H. Va.' "H" stands for House, i. e., home, residence, and "Va." of course stands for Virginia.

I have never practiced law in New York, but have been a silent partner in the law firm of "Chanler, Maxwell and Philip, 120 Broadway," which firm name you will find a few places below my own in Trow's Directory of the above date.

There can be no doubt about my residence's being in Virginia, for in 1895 I went to the Commissioner of Taxes' Office in the Steward Building, corner Broadway and Chambers Street, and myself wrote, at his request, in the Tax Book a full description of my residence. It is, of course, there yet. It is to the effect that I was interested in a law firm in New York, but that I did not personally practice law in New York, as the business I had charge of was a manufacturing one in Roanoke Rapids, North Carolina, and that my home, "The Merry Mills," where I lived, was at Cobham, Virginia. The object of the above visit was to fix the amount of my personal tax in New York. The amount fixed was $2,500 (twenty-five hundred dollars). This took place in 1895, and neither the amount nor my address has since been changed.

Moreover, no better evidence as to my residences's being in Virginia could be asked than is offered by the sworn testi-

mony of the three petitioners (my brothers, Messrs. Winthrop Astor Chanler, Lewis Stuyvesant Chanler and my cousin, Mr. Arthur Astor Carey). Page 3, lines 141 and 142 of the Commitment Papers, where they declare: "Mr. John Armstrong Chanler has, for several months, while at his home in Virginia": this should settle any doubt about my residence.

It might be well to state before going further, the probable causes which led to the said brothers' and cousin's wishing to see me declared insane and confined in an Insane Asylum.

You will remember that abusive letter written me immediately after that Directors' Meeting of the Roanoke Rapids Power Company in December last by this same brother, Mr. Winthrop Astor Chanler, in which he refused to speak to me or have anything to do with me except by letter or third parties. You will also remember that I accepted his terms and informed him that I would have the books of my Father's estate, of which he was an Executor, examined. You must know that there are two Executors of my Father's Estate. One of them is Mr. Winthrop Astor Chanler and the other is Mr. Lewis Stuyvesant Chanler. These two gentlemen, who are equally to blame for what I am compelled to believe is innocent but palpable mismanagement of my Father's Estate, join hands in petitioning for my incarceration in an Insane Asylum before I had the opportunity to investigate their mismanagement—but two accountings of their management of the said Estate having been rendered in ten years.

Furthermore. As I have told you there has for years past been no love lost between my family and myself. When affection is absent and business interests are present it behooves a careful man to look about him, and see, in seeking for the solution of an obscure action, whether or not it could have been to the parties' business interests to do an otherwise incomprehensibly malicious thing.

The business end of the present situation throws a bright light upon it.

Under my Father's Will I enjoy an eighth of the income of his Estate during my life. At my death without issue my said share reverts to his Estate. Should I leave issue my said share would go to said issue. It is therefore evidently to the business interests of my family to prevent my marrying by locking me up for life in an Insane Asylum, if possible, and if that is not possible, the next best step towards safeguarding their business interests is to throw, if possible, an insurmountable obstacle in the way of my marrying. No more insurmountable obstacle in the way of my marriage could be imagined than insanity.

Granting that I get out of this Asylum the stigma of having been confined in it would stick to me through life. You need not necessarily infer that I have any intentions of marrying, only I like to retain the privilege of the option.

Further. There is every human probability that, were I to be confined in these surroundings long enough, my mental and physical forces would succumb to the hideous moral strain and confinement. When this took place my family would be appointed a commission to administer my Estate. I being by that time a bona fide—instead of what I am at present a bogus-maniac. I have an estate which bids fair to be very valuable in time. Certain portions of that estate are represented by large stockholdings in the United Industrial Company and the Roanoke Rapids Power Company. These said holdings could be sold to third parties, with the understanding that they were to be bought back at a certain figure, by one or more of my brothers or sisters, who already hold stock in the said companies, and who I know would like to increase their holdings—once the said "family commission" for my estate came into being.

Furthermore. Nothing would be easier than to break my will on the ground of insanity, now that I have been declared insane and confined as an insane person in an Insane Asylum; that my family would make every effort to break my will I make no doubt. For two reasons. First because of their unfriendly attitude toward me for years past. Sec-

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ond because they are in a position to know that I have left all of them out of my will, except one sister and that—strictly confidentially—my largest legatee is the University of Virginia for which, on account of its own character and that of Thomas Jefferson, I have a high admiration.

Furthermore. The United Industrial Company of which I am the controlling stockholder, and of which I was a Director last December, held its annual meeting for the election of officers for the ensuing year, the first week in January last. My brother, Mr. Winthrop Astor Chanler, had been elected by my votes, as President of the said Company the preceding year at a salary of $2,000.00 per annum. After receiving the abusive letter, before alluded to, from him last December, I decided to elect myself President of the United Industrial Company in his place. His said letter to me having specifically stated that he would not speak to me again or hold any communication with me except by letter or third parties, had rendered it a business impossibility for me to elect, as President of a Company, a man who was not on speaking terms with myself: who besides being the controlling stockholder was one of the Board of Directors.

I had it delicately conveyed to Mr. Winthrop Astor Chanler by third parties, some days before the election, that it would be as well for him to resign his Presidency of, as well as his membership on, the Board of Directors, of the United Industrial Company. This he promptly did, and at the ensuing election in January, '97, I, voting by proxy, for I was at home in Virginia at the time, elected myself President of the United Industrial Company in his place, together with a Board of Directors of my own choosing, to whom I had previously conveyed enough stock in the Company to render them eligible under the Law to hold office.

It might be well for you to bear in mind that the above revolutionary and delicate stock manipulation was conceived and carried out by an alleged maniac. For the conception of the above plan took place on receipt of Mr. Winthrop Astor Chanler's said abusive letter, about the middle of De-

cember last, and the carrying out occurred in January of '97. Whereas my present attack of alleged insanity began, according to the Commitment Papers, in November, 1896.

Mr. Winthrop Astor Chanler is heavily interested in the United Industrial Company. The said Company's factory is situated in the town of Roanoke Rapids, North Carolina. He has put $50,000.00 into the said Company. Finding himself checkmated, as described, he, apparently out of revenge and interest in his stock, set about to get control of said Company, and thereby of his said stock out of my hands. It was a desperate game, but $50,000.00 is a large stake. It is necessary for me to make a short digression here in order to give you all the threads of the plot.

Mr. Stanford White again comes upon the stage. He had intimated to me last February in New York, through a third party, that he thought I should take an extended rest from business, and that it would give him great pleasure if I were to make him and Mr. S. G.—the distinguished sculptor and a friend of mine and Mr. White's most intimate friend—my powers of attorney to transact all my business and look after all my affairs.

Here was the spectacle of two rich, successful, and eminent men willing to take upon themselves all the work and worry of my affairs for friendship's sake. I was touched. I thought that there might be something behind all this, but I did not impute selfish motives to either of them.

I declined the services of Mr. S. G. but accepted those of Mr. Stanford White. My reason for so doing was that business was extremely dull, and I thought that if Mr. White wanted to help me run my affairs there would be no harm in letting him do so, I being able to revoke the power of attorney at any time and being able to supervise his work meanwhile. So I gave him a limited power of attorney.

I also at his request resigned from the Board of Directors of the Roanoke Rapids Power Company to make room for Mr. White on that Board. Mr. Winthrop Astor Chanler's presence on said Board would have made the transaction of

business difficult owing to his disinclination to talk to me, whereas Mr. White is one of his closest friends.

I also resigned from the Presidency of the United Industrial Company, Mr. White thereby becoming a Director of the said Company and one of my previously chosen Directors being elected to fill my place as President.

All this having been arranged I was about to return to Virginia to await the arrival of "the McKinley wave of prosperity" when I was arrested and brought here.

As I said it appears that my brother wished to prevent my making use of the power I had attained in the United Industrial Company by locking me up in an Insane Asylum. He achieved his end.

Lastly I hold a note of the United Industrial Company for about $14,000 (fourteen thousand dollars); this note is past due. It would greatly embarrass Mr. Winthrop Astor Chanler were I to demand its payment. How much has the fear that I would do so had to do with his locking me up? The said amount of the note was advanced by me to the said Company. He owns $50,000 (fifty thousand dollars) worth of the said Company's stock, and others of my immediate family own about $25,000 (twenty-five thousand dollars) worth of the same stock. It would pay them to join forces and repay me their pro rata share of my overdue advance to said Company, rather than have said note go to protest and legal proceedings ensue.

Cheapest of all, however is to lock me up out of reach of "protest."

I think I have given you enough of the business end of this conspiracy for you to see clearly that it was to my brothers', Messrs. Winthrop Astor Chanler and Lewis Stuyvesant Chanler (the Co-Trustees of my Father's Estate) interest, as well as to that of my whole family, that I should disappear for an indefinite period. Add to their business interests the strong personal interest of jealousy and dislike and you have a powerful working incentive.

As for Mr. Arthur Astor Carey's motive—he is the third

Petitioner—for wishing to see me declared and locked up as a lunatic, that is easy to find. I have had a series of violent altercations with him stretching over a period of more than ten years. In fact I may say he is my oldest, if not my most intelligent enemy. The last row I had with him was in 1894, and I have not so much as laid eyes on him since.

We may now resume the perusal of the Commitment Papers. You will remark that the three Petitioners, Messrs. Winthrop Astor Chanler, Lewis Stuyvesant Chanler and Arthur Astor Carey, swear that the acts alleged to have been committed by me in Virginia and in New York are of their own knowledge. For you will note on page 4 of the Commitment Papers line 165 to line 168 "Winthrop A. Chanler, Lewis S. Chanler and Arthur A. Carey being duly sworn, depose and say: that they have read the foregoing petition and know the contents thereof, and that the same is true to the knowledge of the deponents except as to the matter therein stated, to be alleged on information and belief."

As there are no "matters therein stated to be alleged on information and belief" the matters therein alleged must therefore all be "true to the knowledge of deponents"; in swearing that the said matters were "true to the knowledge of deponents" the said deponents Messrs. Winthrop A. Chanler, Lewis S. Chanler and Arthur A. Carey perjured themselves; for not one of the said deponents has ever crossed the threshhold of my "home in Virginia," where part of the alleged acts are sworn by said deponents to have been committed; and not one of the said deponents saw me later in New York where the remainder of the said alleged acts are sworn by said deponents to have been committed.

One of these said deponents, Mr. Lewis S. Chanler, was in Europe just prior to the 10th of March, but having sailed from England on a cable's notice, reached New York in time to swear on March 10th to alleged acts committed by me while he was abroad or on the ocean.

The said deponent, Mr. Arthur A. Carey I have not seen since 1894.

The said deponent Mr. Winthrop A. Chanler I have not seen since that Directors' Meeting about the middle of December, 1896.

So much for the veracity of the three Petitioners Messrs. Winthrop A. Chanler, Lewis S. Chanler and Arthur A Carey.

Now let us examine that of the two "Medical Examiners in Lunacy" namely: Dr. Moses Allen Starr (for our friend the Oculist turns out to be an Examiner in Lunacy) and Dr. E. F. If you turn to page 5 of the Committment Papers, you will see under the caption "Certificate of Lunacy" and on line 200 "Patient resides at Hotel Kensington, New York, County of New York;" and now turn to page 7 of the Commitment Papers and on lines 275, 276 and 279, you will find "that the facts stated and information contained in this Certificate are true to the best of my knowledge and belief;" then follow the signatures of M. Allen Starr, M. D. and E. F., M. D. and then line 279; "severally subscribed and sworn to.' Doctors M. Allen Starr and E. F. therefore, swore that to the best of their knowledge and belief I resided at the Hotel Kensington, New York, notwithstanding the fact that my said brothers and said cousin, the said Petitioners, swore of their own knowledge that my residence was in Virginia—their words were cf., lines 141 and 142, "Mr. J. A. Chanler has for several months while at his home in Virginia"—and also notwithstanding the fact that Dr. E. F. found me at my "home in Virginia" when he presented himself there in company with Mr. Stanford White last February; and Dr. M. Allen Starr was aware of the said visit, on the part of Dr. E. F. to my "home in Virginia:" said visit having been touched on before Dr. M. Allen Starr in my presence. There could, therefore, have been no possible doubt in either Dr. E. F.'s or Dr. M. Allen Starr's mind about my residence being in Virginia. On top of their own knowledge as above described, and on top of the corroboration of it in Trow's Directory (which they probably consulted, for touching my occupation they say on line 202 "occupation Lawyer"), which gives my residence Virginia, on top of, and in spite of, all this, both Dr. M. Allen

Starr and Dr. E. F.. swore that to the best of their knowledge and belief I reside at the Hotel Kensington. This looks to me like perjury. How does it strike you?

At all events it is so remarkable a divergence, as sworn testimony, from the sworn testimony, on the same subject, on the part of the said Petitioners that it badly needs investigation.

The remainder of the statements in the Commitment Papers both on the part of the said Petitioners, and on that of the said Medical Examiners in Lunacy, is on a par with the above instances of false swearing.

On the maxim "False in one thing false in all,, it becomes unnecessary for me to take up your time to deny the false allegations on the part of the said Petitioners and on that of the said Medical Examiners in Lunacy, as "they drag their slow length along."

I shall content myself with making a general denial to all such allegations which go to show me of unsound mind.

Such trifling allegations as that I have limited myself to a peculiar diet, or that I have secluded myself, or that I burnt my hand (in an experiment by the way), I demur to.

I also demur to the allegation that I frequently went into a "trance-like state." This was done in the presence of Drs. Moses Allen Starr and E. F. and at their request in order that they might note the action of a trance-like state. Their request to me was based on purely scientific grounds and I granted it on the same grounds. There was never any question of Medical advice. Drs. E. F. and Moses Allen Starr each pretended interest in the trance-like states, and Dr. Moses Allen Starr pretended to some knowledge of the same.

You will remember that I said that I had for some years been carrying on investigations in Esoteric Buddhism. The said trance-like state is one of the means I from time to time employ to that end. As I said before I am not going to bore you with a lecture on Esoteric Buddhism, and shall drop the subject with the remark that I have not injured myself nor anybody else by my said investigations.

To all allegations to the effect, or tending thereto in the remotest degree, that I have a delusion or delusions of any kind or description I make an unequivocal denial.

The allegations that I have exposed myself to cold, neglected or injured myself, I unequivocally deny.

The allegation that I threaten people I unequivocally deny.

The allegation that I was emaciating, I unequivocally deny.

The allegation that I was confined in an Institution for the Insane in New Paris, France, I unequivocally deny. "New Paris" is a remarkably ignorant clerical error.

I unequivocally deny each of the following allegations which for brevity I shall designate by the number line they fall on. Namely. Line 142 from the word "Been" to "Manner;" line 144 from the words "he has" to the end of line 150 inclusive; line 187 to line 191 inclusive. Line 205 to line 212 inclusive. Line 215 and line 215, with the exception of "is armed": the very natural fact that I had a revolver in my room, which I always travel with, was twisted until it was distorted into "is armed." Line 218 and line 219. Line 244 to line 249 inclusive, except that I maintain that my eyes have changed from brown to gray. Line 252 to line 261 inclusive, except that I frequently went into a trance-like state at the request of Drs. Moses Allen Starr and E. F. and that I sometimes talked French when in the trance-like state. Line 262 to line 264 inclusive. Lines 269, 270, 271. Line 273 and line 274. The valet in question denied to me in my cell the foregoing allegation in the following inelegant but explicit language to wit: "I didn't describe no gradual development of no delusion for I didn't see none." I demur to line 272 which says: "He has become suspicious of friends, has secluded himself," on the ground that I showed keen interest in suspecting my friends. My friends so called—family and friends—ran me in here. Had I been more suspicious of friends I should not be in the hole, which I occupy at present.

I think that you will agree with me that the frequently

occurring word "line" in the foregoing paragraph should read "lie."

So much for the allegations of the said Petitioners and said Medical Examiners in Lunacy against my reason. Now let us see how far the allegations of the Honorable Henry A. Gildersleeve, Justice of the Supreme Court of the State of New York, that I am a maniac, with suicidal as well as homicidal tendencies—the only conclusion to be drawn from his allegations—remember the Honorable Justice has never laid eyes on me, line 187 to line 191 inclusive, and line 345 to line 346—let us see how far said allegations have been borne out by the facts which have transpired since my arrest March 13th.

I made no resistance to the Police who arrested me at the Hotel Kensington and brought me here. I gave them cigars and we smoked and chatted amicably together on the way here.

During the four months that I have been imprisoned here I have not committed a single act which in the remotest degree resembled either violence or insanity I have threatened nobody during that time. I have frequently warned the authorities here that I would seek legal redress for the false imprisonment that I was undergoing, and that I would hold them legally responsible for their share in it.

The above statement is borne out by each of my keepers—one is on duty with me when the other is off duty—one of whom has been eleven years a keeper in Insane Asylums and the other has been three years in this Institution. Their duty is to sleep in my cell and be with me and watch me when I am awake, and report daily to the Authorities here all that I do or say of any nature whatever. These reports are then taken down in writing by the Authorities and are known as "charts." It is on these "charts" that the progress or retrogression of a "patient's" condition is based. The Authorities —the doctors i. e.—may see the "patient" for five or ten minutes each day, the keeper sees the patient fifteen hours out of the twenty-four. It is in fact the keepers, who are expert trained nurses, and not the doctors who understand most

about the character, habits, and mind of the patient, in the ratio of fifteen hours to ten minutes per day of diagnosis and attention. Neither of my keepers has ever seen me do or heard me say anything which was in the least irrational or unbalanced. Each of them considers me as sane as any man and they are willing to so testify.

Why do the doctors here not discharge me as sane? Why did they not discharge me as sane after a week or two of observation? Because the duty of the doctors in the pay of this Private Insane Asylum appears to be to hold anybody placed here, whether sane or otherwise, long enough for the owners of the Asylum to make a good profit out of him—or her. Times are hard. It is not every day in the week that the proprietors of this Asylum can capture a prisoner who can be made to pay $100 (one hundred dollars) a week ransom until released. As you see by the statement on the cover of the Commitment Papers that is the exhorbitant sum I am forced to pay for a two-roomed cell, a keeper—whose salary is not over thirty dollars a month with board and londging—and baked potatoes. There is no reduction here; I am forced to pay for what I don't want, whether I reject it or otherwise.

You can readily grasp the threads of this daring conspiracy from your intimate knowledge of the ways of criminals, gathered from your long and successful pursuit of them as Commonwealth's Attorney.

It is not necessary therefore for me to point them out to you.

Let it suffice to say that the ground work of the Commitment Papers is an amalgam of avarice, malice and mendacity.

That the only truthful statements in the Commitment Papers are such as in no wise reflect on my reason or sanity. That I was accused by persons who were not in a position to know wherof they—not merely spoke but—duly swore. That these said accusers—the said Petitioners—were all and severally on bad terms with me, and had been so for years. That it was to the unmistakable business interests of two of

the said accusers Messrs. Winthrop Astor Chanler and Lewis Stuyvesant Chanler that I should be disfranchised, as an insane person, of my property as well as of my liberty.

That it was to the equally unmistakable spite and malice of the third said accuser Mr. Arthur Astor Carey that I should end, after years of every description of violent altercation with and opposition to me, in a Madhouse. That having had a sharp altercation with Dr. E. F. for bringing Dr. Moses Allen Starr into my rooms without warning or permission, to spy on me in company with himself as the result proved, which altercation was the basis for a second one with Dr. Moses Allen Starr on the general topic of the morality of the Medical profession: in the discussion of which topic I showed such unexpected knowledge of the habits of many members of the Medical profession that Dr. Moses Allen Starr, after vainly endeavoring to discover the source of my information, earnestly requested me to change the subject: that having had, as I say, a distinct altercation with each of the said doctors—who later were metamorphosed into the said Medical Examiners in Lunacy—the motive of the said followers of the Healing Art, in wishing to see their late antagonist declared a maniac, is not far to seek. I might say that I have not the faintest tinge of prejudice against surgeons as well as such physicians as are both skillful and honest. That there are numbers of physicians who are neither one nor the other it has been my fortune to discover. The proof of the above lack of prejudice against physicians is, that I have spent money in giving aid to deserving Medical students to complete their education.,

The motive which led the Honorable Henry A. Gildersleeve, Justice of the Supreme Court of the State of New York to overlook the grave discrepancy displayed in the Commitment Papers in the spectacle afforded by two conflicting sworn statements on the same subject—namely, the sworn statement of the said Petitioners as to my home's being in Virginia followed by the sworn statement of the said Medical Examiners in Lunacy as to my home's being in Hotel Kensington, New York—the motive which led the Honorable Justice to permit

the said spectacle to pass unchallenged, I shall leave you to surmise. This Institution is very rich.

The motive which led the said Honorable Justice to dispense with "personal service" on a mere ex parte statement, I shall leave you to surmise.

The motive which led the said Honorable Justice to omit to direct "substituted service"—clearly the alternative, when personal service is dispensed with, as implied by the law which reads: "the judge to whom the application (for Commitment to an Insane Asylum) is to be made, may dispense with such personal service, or may direct substituted service to be made upon some person to be designated by him." Cf. printed cover of the Commitment Papers containing the said law lines 53 to 55: the motive which led the said Honorable Justice to the above omission I shall leave you to surmise.

You will note, on studying the extracts from Chapter 545 of the laws of 1896—given on the cover of the Commitment Papers—the tortuousness thereof. For instance take Section 62. The said section contradicts itself. It says line 49 and line 50: "notice of such application (for Commitment to an Insane Asylum) shall be served personally, at least one day before making such application upon the person alleged to be insane."

That is no more than fair—is it? Somebody takes it into his—or her—head or pretends to take the notion into his—or her—head, for certain reasons, that you are crazy. It seems fair that you should be allowed to confront your accuser—a common murderer has that privilege—and be heard in defence to his—or her—allegations, before being summarily arrested like a malefactor, as I have been, and put behind bars without a trial for an indefinite period, perchance for life. Well the above wholesome specimen of boasted Anglo-Saxon justice, law, freedom, etc., is at once wiped out and rendered utterly nugatory by what follows on lines 53 to 55 inclusive. After the above bold bluff at justice—after saying "notice of such application (for Commitment to an

Insane Asylum), shall be served personally, at least one day before making such application, upon the person alleged to be insane"—the law dodges justice and sneaks out at the following carefully prepared loophole line 53 to line 55 inclusive: "the judge to whom the (said) application is to be made may dispense with such personal service." The judge has it all his own way. Get at the right judge and it's plain sailing. There are two explanations of the above law. One, that it is the outcome of manipulated legislation at Albany, by Corporations dealing in bogus maniacs, who wish to legislate in order to continue the said monopoly in maniacs, which the laws of the State of New York at present foster and support.

The other explanation, for the above iniquitous law's smirching the Statute Books of the "Empire State," is that it is the product of the late Republican Legislature.

In other words a citizen of the State of New York can be condemned, and imprisoned without a hearing. All that is required to deprive a citizen of the "Empire State" of his liberty, is, one or two false witnesses, two dishonest doctors, and a judge who can swallow conflicting sworn statements without a qualm. No defence is allowed to the accused.

This is truly the "Empire State." I sometimes wonder, as I look through the bars of my cell, how such things can be, outside the Russian Empire State.

Fortunately for myself, I am no longer a citizen of the "Empire State," but am and have been since 1895 a citizen of the Sovereign State of Virginia; which title to sovereignty I propose to see Virginia make good by rescuing me, recapturing me as it were from the neighboring and supposedly friendly State of New York, by calling on the arm of the Federal courts.

An interesting question this, and one in which it may be shown, that the Doctrine of State's Rights rests for support upon Centralization, and that when one sovereign State steals the citizen of another sovereign State, and thereby the money accruing from his personal taxes, the robbed State

may call upon the common residuary of all extraneous sovereign rights, the central government, to demand restitution from the robber State.

So much for the equity surrounding my present predicament.

Now let us glance at the law. You will readily comprehend with what meager means towards forming an opinion I am at present surrounded.

The sum total of my law library consists of the Constitution of the United States, in the back of a dictionary, and selections from a list of legal maxims in the same book. The Constitution of the United States says Article III., Section 2: "The judicial power (of the Federal Courts) shall extend to controversies between a State and citizen of another State; to controversies between citizens of different States." I am a citizen of Virginia. Should I have a controversy with the State of New York, the controversy being between a State and a citizen of another State, the Federal courts could alone have jurisdiction over the controversy.

The question of a man's sanity, covering as it does his liberty, and his property, is surely a controversy of the first importance.

I therefore—having had my sanity attacked by a State court (the Supreme Court of the State of New York), have a controversy with the State of New York. Said controversy must be tried, therefore, in the Federal Courts.

Furthermore, I have had my sanity attacked by Drs. Moses Allen Starr and E. F. They being citizens of the State of New York, and I being a citizen of Virginia, said controversy must be tried, therefore, in the Federal courts.

Furthermore, I have had my sanity attacked by Messrs. Winthrop Astor Chanler, Lewis Stuyvesant Chanler and Arthur Astor Carey. I being a citizen of the State of Virginia and they, the Messrs. Winthrop Astor Chanler and Lewis Stuyvesant Chanler being citizens of the State of New York, and Mr. Arthur Astor Carey being a citizen of the

State of Massachusetts, said controversy must be tried, therefore, in the Federal courts.

Furthermore, I have been restrained of my liberty by "The Society of The New York Hospital," the legal title of the corporation which owns the Asylum in which I am at present confined.

The said corporation being a New York concern, and I being a citizen of Virginia said controversy must be tried, therefore, in the Federal courts.

The above actions are for the future. For the present all I ask is liberty.

It is not necessary for me to tell you how to proceed to attain that end. I will only caution you in closing not to write nor telegraph me, nor mention me to a living soul, save Senator Daniel (to whom of course you will show this letter), anything connected with me or my whereabouts. It has been given out by certain interested parties that I am in Europe (I find that that is the stock term used when a man is sent here). Let it be so considered as long as possible.

Speed is essential, for I have been given to understand, that, when my unknown term of imprisonment here is ended, I am to be shipped to Europe. As to what point I was not informed; most probably to an English private Insane Asylum. That would probably do the business for me, as there they are even more brutal in their treatment of patients than here.

Above all I warn you and Senator Daniel to be on your guard against all the doctors here. For they are all of them as smooth spoken and deceptive in their manner as any set of confidence men you ever encountered.

The name of the Superintendent is Dr. Samuel B. Lyon, the Asylum is commonly called "Bloomingdale," but that is merely a fancy name. Its legal title is "The Society of The New York Hospital," a private corporation, having its offices and Hospital on 15th St., a few doors west of Fifth Avenue, New York.

As you may gather from my letter I mean war.

No compromise with any man, or institution, which has been in the remotest degree connected with this rascally conspiracy.

Listen to nobody who endorses what has been done.

The more friendship such a man professes for me, the more profound should be your distrust for him.

The manner of proceeding to procure the writ of habeas corpus I leave entirely in Senator Daniel's and your hands.

Speed and secrecy are the watch-words. The moment it leaked out that any effort was being made for my release, that moment would probably end my imprisonment here and begin it in a closed carriage, on my way by night bound and gagged to Long Island Sound—eight miles off—where a private tug boat would convey me to an ocean Steamer at New York, or a sailing vessel bound around "the Horn." I can assure you that outlawed as I am, my position is one of considerable uncertainty—not to say danger.

It is unnecessary for me to say that nothing but the most unexpected and dire necessity could induce me to go before a sheriff's jury, the usual manner in the State of New York, of carrying out a habeas corpus proceedings for a man who has been declared insane by a judge. I object to this for three reasons:

First: Because it is not the right way to go about it. I am not a citizen of the State of New York and therefore the sheriff's jury does not apply to my case.

Second: Because I do not desire the notoriety consequent thereon.

Third: Because my family are most anxious that I should go before a sheriff's jury, in the desperate hope that the said jury would believe what they, and the doctors said about me. In which case the jury would pronounce me insane, and hand me over to the custody of my family, who could then apply for and receive into their hands my property and the management thereof under the name of a commission.

The above line of action (going before the sheriff's jury)

has already been suggested to me by an emissary of my family, who told me that that was the only way for me to get out—hoping thereby that I would choose it.

The best way, it seems to me, would be to have Senator Daniel and yourself go before the Attorney General in Washington, and have him issue an order to the United States District Attorney in New York City, to go before a Federal judge in New York City with Senator Daniel and yourself, and procure from said Federal judge a writ of habeas corpus, on the double ground that I am not insane—show portions of this letter to the judge as proof of my sanity, on the maxim "To write is to act," if I write sanely I act sanely—and that if I were insane the action should have been begun in a Federal and not in a State court, owing to my being a citizen of Virginia, and not of New York, and that my Commitment by a State Court is therefore illegal and must be set aside.

I merely mention this, with the full knowledge of its being—owing to the circumstances—a horse-back opinion.

I don't dwell on the irregularity of the commitment—the conflicting sworn statements—the suggestions of fraud—the fact that the name of the institution, in which I am, is therein given as "Bloomingdale Asylum," whereas the Commitment Papers distinctly state under it, on line 156: "it is essential that the official title of the institution should be correctly inserted," and whereas the official title of said institution is not "Bloomingdale Asylum" but "The Society of The New York Hospital." The same irregularity is repeated on the cover of the Commitment Papers, where the title of the said institution is again given as "Bloomingdale Asylum." These, with the rest of the legal aspects of the case, I leave entirely in Senator Daniel's and your experienced hands.

If necessary, let a Federal judge examine into my sanity for a change. Examination at the hands of a distinguished and honest man is the last thing that I would avoid.

If necessary let us begin de novo, only in a legal, equitable, and honest manner. No more dishonest doctors, no more Star Chamber judges, no more summary arrests. We are

not in Cuba nor, as yet, in the State of New York does martial law prevail.

As I am allowed no money—I haven't seen a dollar bill in months—and as I am not allowed to communicate with my New York office, I am unable to send you and Senator Daniel cheques for retainers and disbursements. So I must ask you to explain the situation to the Senator and tell him that I must ask him to charge all traveling expenses and disbursements to my account until I am liberated.

The same I request of you. I hope before many days to see Senator Daniel and yourself enter the door of my cell, accompanied by an officer bearing a writ of habeas corpus from a Federal court.

Faithfully yours,
JOHN ARMSTRONG CHANLER.

P. S.—Please bring this letter with you as a resume of my case.

J. A. C."

State of Virginia,
County of Albemarle, } to-wit:

I, Micajah Woods, Commonwealth's Attorney for Albemarle County, Virginia, being duly sworn depose and say that I received the appended letter addressed to me, under date July 3, 1897, in October, 1897, that the said letter is in the handwriting of John Armstrong Chaloner and signed by John Armstrong Chanler.

MICAJAH WOODS.

Sworn to before me this 12th day of July, 1905.
JOHN W. FISHBURNE,
Notary Public for the County of Albemarle, in the State of Virginia.
John W. Fishburne, Notary Public,
Albemarle County, Virginia.
My term of office expires September 19th, 1906.

State of Virginia,
County of Albemarle, } to-wit:

I, W. L. Maupin, Clerk of the Circuit Court of the County of Albemarle in the State of Virginia, the same being a Court of Record, do certify that John W. Fishburne, whose genuine signature is affixed to the foregoing and annexed certificate was at the time of signing the same a Notary Public in and for the County and State aforesaid duly commissioned and qualified according to law and authorized to take proof and acknowledgment of Deeds and other instruments of writing.

His commission expires 19th day of Sept., 1906.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court this 12th day of July, 1905.

W. L. MAUPIN,
Clerk.

[Seal of Virginia.]

The Witness: I will now produce the original letter.

(Hands paper to plaintiff's counsel).

By Counsel for Plaintiff: Q. Mr. Chaloner, I hand you a letter; please state if that is the letter which you have written to Captain Woods?

By Counsel for Defendant: Objected to as leading.

By Counsel for Plaintiff: Mr. Chaloner, I hand you a letter; will you please state whether or not that is your letter?

A. Yes.

Q. Where and under what circumstances did you write it and to whom?

A. This is a letter written by me July 3rd, 1897, from my cell in "Bloomingdale," falsely so-called—the real title

is "The Society of the New York Hospital"—and reads as follows:

(Witness proceeds to read from the paper purporting to be the original letter which he wrote to Captain Micajah Woods.)

(It was agreed by the parties that it was not necessary to re-copy this letter into the record of the evidence, as same had already been done above.

By Counsel for Plaintiff: We now file the original letter from John Armstrong Chaloner to Captain Micajah Woods, dated July 3rd, 1897, and ask that the same be marked for identification and made a part of the evidence in this case.

Said letter is marked "Plaintiff's Exhibit 38-a," with 1911 deposition.

By Counsel for Defendant: We object to the consideration by the Court of the reading of this paper on the ground of its irrelevancy and on the ground of its unnecessarily cumbering the record, the paper having been introduced in evidence some three years ago.

By Witness: I would like to have this signature of Clerk W. L. Maupin certified—I see that this has not been done—I would like to have this executed for service outside of the State, according to the Federal Statute for that purpose.

Q. By Counsel for Plaintiff: Mr. Chaloner, I hand you a letter and the envelope that contains it, and ask you to describe both the envelope and letter, and the circumstances under which they were received?

A. This is an envelope addressed "John A. Chanler, Esq., N. Y. Politeness of," name underneath blotted out by me

for fear that the asylum authorities would get hold of it. This letter was received by me, as a pencil note in blue pencil indicates, made under the signature of the writer in the following words: "About three, Saturday afternoon, Oct. 16th, 1897. J. A. C." This is a letter that I received from the late Micajah Woods, the Commonwealth's Attorney of Albemarle County, Virginia. I was in "Bloomingdale" (falsely so-called), The Society of the New York Hospital, White Plains, and reads as follows:

"Charlottesville, Va., 14 Octr., 1897."

In the left-hand top corner appears the following in print:

"Micajah Woods,
Attorney at Law,
Commonwealth's Attorney."

"John Armstrong Chanler, Esq.

"My Dear Sir:

"Mr," and the name that follows has been blotted out by me, and the remainder of the letter reads as follows:

"has this day delivered to me your sealed communication, containing enclosures. I assure you I will give the whole matter the most careful consideration. I will advise with the gentleman you refer to and will then let you hear from me.

I am now engaged in trial of important cases in court and will be so engaged during the next week.

With my best wishes and sincere regards.

Sincerely your friend,

MICAJAH WOODS."

This is the reply to the letter just offered in evidence, which was sent by me to Captain Woods by a special messenger to Charlottesville on or about the 13th of October.

By Counsel for Plaintiff: We file this letter and envelope in evidence, and ask that the same be marked for identification and made a part of the evidence in this case.

Said letter and envelopes are marked "Plaintiff's Exhibits 39 and 39-a."

PLAINTIFF'S CORRESPONDENCE IN 1900, WITH GEORGE H. BARNES, re COUNSEL, 309-326.

By Counsel for Plaintiff: Q. Mr. Chaloner, I hand you some documents; kindly describe them?

A. This is a letter that I wrote under my alias of James Chilworth, from Kensico, Westchester County, N. Y., six miles from White Plains, on the following date, early in the Spring of 1900. (March 26th, 1900). This letter is written in blue pencil on large white tablet paper supplied by "Bloomingdale." It was written in pencil for a reason stated in the body of the letter. It also contains some sonnets, Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9—nine sonnets in pencil in my handwriting on small tablet paper as furnished by "Bloomingdale." This letter was addressed "George H. Barnes, Esq., Attorney and Counsellor, 52 East 19th Street, New York City." It has a special delivery stamp on it. The postmark was torn off in the wear and tear which this letter has sustained, but returned to me with this letter; it came off in my hands at "The Merry Mills" the other day. I wrote on the back of it "Torn off the G. H. B. large envelope 10-1-11." This torn off portion reads "James Chilworth, Kensico, Westchester County, New York," in my hand-writing in ink. There are two letters to Barnes, one March 26th and one April 5th. The March 26th letter is the longer of the two. The envelope is postmarked "Kensico, 1900." It was started March 26th—this letter—but it was somewhat lengthy and was not finished that day. I did not go every day to Kensico, a twelve mile walk there and back. I went there about three times a week. So it was not posted until early in April, that is blurred, and on the back of the envelope is "April," and

there is something, maybe a "3," I can't make it out. So I put the postmark that was torn off in an envelope that I happened to pick up, so as not to lose this torn portion of the envelope, and wrote on the back of the envelope in red pencil, many of my notes are made in blue pencil, but this postmark being very important I put it in red pencil), as follows: "Postmark torn from letter to Geo. H. Barnes, Kensico, 1900. J. A. C. 10-1-11." I forgot to state that there is another letter here, the envelope being addressed to "W. J. Brown, Esq., c/o G. H. Barnes, Esq., Attorney at Law, 52 East 19th Street, New York City," and in the left-hand top corner is "James Chilworth, Kensico, New York." These letters, I should say in explanation, were returned to me by Barnes after I escaped from "Bloomingdale," hence my getting them after they had passed through the mail. This letter to W. J. Brown I will read. It is postmarked "Kensico, April, 1900." The letter reads as follows:

"Kensico,
Westchester Co.,
New York.

"W. J. Brown, Esq.,
c/o George H. Barnes, Esq.,
Attorney and Counsellor,
52 East 19th St., New York.

Dear Sir:

Kindly let me know by return mail when Mr. G. H. Barnes will be at his office. In the meantime please hold the registered letter sent him last week; for if Mr. Barnes will not return soon I shall ask you to return it to me here unopened.

Yours sincerely,
JAMES CHILWORTH."

I will now read the letters to George H. Barnes, as follows:

"The Society of the New York Hospital.
White Plains.
Westchester Co.
New York.
March 26, 1900.

Confidential.
George H. Barnes, Esq.
Attorney and Counsellor,
52 East 19th St., New York City.

My Dear Barnes:

You will pardon the length of this letter when I say that I wish to ask your aid in a habeas corpus proceedings which I wish Delos McCurdy to bring without delay. You will naturally at once ask yourself "Where do I come in?" To which I as promptly reply "You come in as my new legal agent for managing my New York property as soon as Delos McCurdy drags me into the light of day from the madhouse cell in which I have been languishing since March 13, 1897. That property consists of a trust estate from which I receive five thousand dollars per annum. The new ten story office building, No. 298 Broadway, New York City, and fifty per cent of one third of the net profits of a hundred thousand dollar knitting mill at the New Southern manufacturing town of Roanoke Rapids, North Carolina. Omitting this last item as uncertain, you can count on your regular commission for receiving the said five thousand dollars trust income, and also all the rents from No. 298 Broadway, of which all the floors but one are rented, and negotiations for that are pending. I have several reasons for wishing your services. First. My law firm has been per force disbanded since my arrest and incarceration here—this place is popularly called

"Bloomingdale" though there is no such place in legal existence, its legal title being given at the head of this letter. Second. As since 1895 I have been a citizen and a resident of Cobham, Albemarle County, Virginia, only—as you know—coming on to New York on business trips at long intervals; my law firm acted as agent for my New York property: as that is disbanded I need a new agent. I may as well say here that I am on bad terms with both my former law partners. To cut a long story short, they mistook me for a good thing. Hence you see the way lies open for my getting a new legal agent for my New York property. Besides my New York property I have several other pieces of property, which with push and time bid fair to be very valuable. So you see, my dear Barnes, that financially I am far from being a dead one. I am as aware as your blue-eyed, hard-headed self that "Money Talks" *like nothing else* in this whirling age and therefore have always seen to it that my financial organs were in sound—not to say lusty—condition. My third reason for wishing your services is a personal one. To put it frankly, I like you, and always have, although my active and wandering mode of life has entirely prevented my making or following up friendships. You therefore see the mutual consideration bidding fair to bind us into a lasting and firm friendship. So far so good. I now look upon you as my agent and ally proportionately interested with me in my deliverance from durance.

I may as well say here, *en passant*, that my reason for employing a pencil instead of a pen is that the former is *noiseless*. The authorities here being in deadly dread lest I get into communication with the outside world, and so get a habeas corpus. My keeper, who I hear moving about in the cell communicating with mine, could hear the scratching of a pen and would be expected to report it to the authorities. A

former letter I wrote in July 1897 being in ink was overheard, and I came near getting into trouble. To go back to your engaging Delos McCurdy to bring habeas corpus proceedings. Inside of three weeks from date, I shall mail you a copy of my "Commitment papers" and a long letter cutting the said papers to pieces, and thereby tearing into shreds the rascally conspiracy which landed me without a trial or hearing of any sort before a jury or even a judge, which landed me in a madhouse cell as my enemies hope—*on the documentary evidence—for life.*

Owing to circumstances which I shall explain later on in this letter I am unable to let you have the said documents at present. Let it suffice to say that I now and hereby go on record to the effect that I have been the victim of a conspiracy which to my mind as far surpasses the Dreyfus case as a madhouse surpasses a prison in horror three weeks—possibly less—will prove whether I am within the facts or not.

Until you get the said documents, all I wish Delos McCurdy to do is to pass on one, and possibly two points of law. To-wit: I maintain that *the present New York law covering the committing of an insane person is in direct conflict with the United States Constitution.* Because under it persons are committed *regardless* of their nationality—by which I mean their allegiance—or their citizenship. Under the present iniquitous law persons are shanghaied into this State (of New York) lured into the State of New York and then railroaded to a private insane asylum for life, without the faintest shadow of a trial before either a jury or a judge. Persons are lured into the state and falsely imprisoned for life *for the money there is in them* for the private insane asylums' proprietors. The whole vile scheme is as legalized—allegedly—as were the Star Chamber legalized artocities of the English Kings. The point I put to Delos McCurdy is this:

The U. S. Constitution says to the effect—I haven't a U. S. Constitution at hand—the U. S. Constitution says that controversies between a State and a citizen of another State come under the jurisdiction of the Federal Courts. *Also* that controversies betwixt citizens of different States come under the jurisdiction of the Federal Courts. A commitment to an insane asylum—the proceedings preceding it—is undoubtedly a "controversy" of the clearest type; involving as it does loss of liberty and property. I can prove beyond peradventure that since the fall of 1895, I have been a citizen of the State of Virginia, Ergo, the Federal Court of the New York district should be the place to bring a "controversy between me and the State of New York—I *happening* to be in the State of New York at the time, having been—as I'll prove on the evidence—shanghaied into the State on the said occasion—lured from Virginia. I'll also prove that there had been bad blood between myself and *all* the members of my family, male and female, and without a solitary exception, for a long time previous to my being committed, by two of my brothers and a cousin, March 13th, 1897, to this place as a dangerous maniac. I'll also prove that the cause of the said bad blood was largely a money question. As my said cousin was a citizen of a New England State at the time of the commitment, and as my said two brothers were citizens of the State of New York at the same time, under the said clause in the U. S. Constitution (I being a citizen of the State of Virginia at the said time) the said "controversy" between them and me touching my sanity should have been brought in a Federal and *not* in a State Court. To recapitulate. I maintain that my commitment under the above circumstances was unconstitutional and will be set aside as illegal on that ground if brought before say, Judge Lacombe, of the New York "District Court". The above is the

first point I wish you to put to Delos McCurdy. If he agrees with me I want an action brought before Judge Lacombe to set aside my commitment. I shall then go for damages against the State of New York for false arrest and false imprisonment. If, on the other hand, he disagrees with me, and holds that controversies between a State and a citizen of another State or controversies between citizens of different States, may be tried in State Courts, such is my respect for Delos McCurdy's legal learning—owing to his breaking Samuel J. Tilden's will—such is my respect for his learning that I withdraw my said point.

In that case—but in that case only—I bring up my second—and last—legal point for Delos McCurdy to pass upon *before* even considering the details of the procurement of the writ of habeas corpus.

My second point. To-wit: I maintain that even in the State of New York, the present law governing the commitment of a person as an insane person, I maintain that even in the State of New York the said law is *unconstitutional.* I refer to the decision of the New York Court of Appeals in the Bettina Girard case. Furthermore. The said present law is contrary to even the most savage, primitive, and natural sense of law and equity. It utterly wipes out trial by jury in a controversy concerning liberty, happiness, health, and property. Furthermore, it utterly wipes out the right even to be brought before a Judge to be heard. Furthermore, it utterly wipes out the right to be confronted by your accusers. If Delos McCurdy agrees with me in this second point—*but disagrees* with me on my *first*—then I wish an action brought in a New York State Court to set aside my Commitment on the said grounds of unconstitutionality. I shall then go for damages against the State of New York for false arrest and false imprisonment. If, however, Delos McCurdy disagrees with me on my said

second point as well as on my said first point, then and *only* then, let him bring an action for a writ of habeas corpus to prove my sanity.

I put that question last because it is the simplest and easiest of proof. On the logical maxim "*To write is to act*" if I write sanely I act sanely. I have a small trunk full of my "acts" from the *day after* my incarceration (I was brought here *without the least resistance* but against my expressed will, by two policemen in plain clothes March 13, 1897) from the day after my incarceration to date. I have made no "breaks" during all that time. The proof of that statement is the fact that I can post you this letter. For the keepers won't for they are all spies and owned body and soul by the authorities of this private insane asylum annex and secret side-show to that private corporation The New York Hospital, on 15th St., just west of 5th Avenue. And no mail or even telephone messages are allowed to be sent before being read—as at Sing Sing Prison—by the authorities. I have been on full "parole"—the *only* "inmate" here who is—by which is meant that I may walk wherever I like in consideration of my promise to return. I have been on full parole since last April. The question will now naturally arise in your mind "What in H—l have you been doing cooling your heels all that time and with a chance to get a letter out, not doing so." To which I reply: I have been waiting to hear from a lawyer I wrote to July 3rd, 1897, but did not get a person to get the letter out on the quiet for me—wasn't on parole then—until the following October. I got a reply from the said lawyer promptly in October. He did not promise to take the case, but I inferred from his letter in reply to mine to him asking him to, in connection with another man. I inferred that he would take my case. I told this lawyer that he must on no account telegraph or write to me as all my mail could

be opened by the authorities and even "held up" for that matter. I did this on the supposition that he would or could take the case. He is a District Attorney in another State and very busy. As I was not on parole, I couldn't write to him and I'd warned him not to write to me. In order to *receive* my mail on the quiet, I have to walk twelve (12) miles—six miles each way—to a hamlet called Kensico, where under the assumed name of James Chilworth, I am known to the post office. Quite romantic, is it not, for this materialistic epoch? To resume. Prison life was very trying for the first two years. Solitary confinement in a cell is apt to wear on the nervous system, especially solitary confinement in a madhouse cell. I found it so at all events, and for the first year or so it made me too weak to walk or even sit up for any length of time. It was only by slow degrees that I got back my old walking powers—I have walked some years ago, five (5) *measured* miles up and down hill on a country corduroy road within the hour—by degrees and slowly I got them back. *Then* the Kensico scheme and James Chilworth came in. So about two weeks ago, I wrote to the said District Attorney asking about my case. I got a letter from him last week saying that he had been unable to take hold of it, press of business and distance from New York preventing. You will remember I had warned him not to write or wire. He couldn't visit me, no lawyer or anyone likely to help me get my case into court would be allowed admission to me. So there I was. I'd chanced his being able to make time for my case, and lost. I at once thought of Delos McCurdy; and as I'd been thinking for some time of making you my legal agent, I at once formed the new plan of campaign which I have just written you. I have, by this same mail, written the said district attorney, asking him to return to me the *certified* copy of my Commitment Papers, which certified copy I'd procured from

Albany early in the game, 'way back in the Spring of '97—and also my said "long letter cutting the said papers to pieces." You will remember I alluded to the said letter at the beginning of this epistle and spoke about letting you have the two said documents inside of three weeks from date. I have two strings to my bow. In case the said district attorney has destroyed the two said documents, I have copies of them here. I think the latter hypothesis highly unlikely and only mention it as an off chance. It would take me three weeks to hear from him *and* then copy my said "long letter," for it is not in shape for mailing in its present first rough draft shape. If, as I suppose, I get the said documents from the said district attorney by return mail, you will have them from me in half that time.

I have steadily protested to the doctors here against my detention, and warned them that I'd bring suit for *extremely* heavy damages against the Society of the New York Hospital, *if* not against its board of directors, which members such august personages as Commodore Elbridge T. Gerry, the Hon. Cornelius N. Bliss, Prest. Frederick D. Tappen, of the Gallatin National Bank, and President of the Union League Club, Banker Brown, of Brown Bros. & Co., Wall Street, and last but far from least, Ambassador Joseph Hodges Choate, of Evarts, Choate & Beaman. Quite an array of "plutocrats," is it not?

Not satisfied with having me declared a dangerous maniac, my said two brothers bring a *second* action against me last April, and have me declared by a *jury, who never laid eyes on me*, and a *judge who don't know me from Adam*, have me declared "an incompetent person" and have a committee appointed for my person and estate. Who do you suppose that "committee of my person and estate" is? No less a person than Prescott Hall Butler, the *law-partner of Director* Joseph Hodges Choate, of this concern! Did you ever see a prettier

bunco game? P. H. Butler skins me to the tune of five thousand dollars per annum ($5,000), that's what I'm made to pay against my will, not counting extras. Prescott Hall Butler quietly pulls my leg to the tune of five thousand per and hands it over to the till of the concern of which his law-partner is a director ("Governor" is the high sounding title they give themselves), Prescott Hall Butler rakes off five thousand per from my annual stack of income chips, and drops it into the "kitty" of the concern his partner is a director of, and of which his (P. H. Butler's) firm is the legal counsel! How's that for high? Is it rich enough for your sporting blood or isn't it? Prescott Hall Butler would be a fool, would have no eye to business, did he not hold me here for life. At a low risk, I'm good for at least twenty years yet. That means a cool hundred thousand, without counting extras. These extras, by the way, are made out by the concern, for which his firm is legal counsel, and *of which he is* the auditor. It smells a bit like a "con" game to me. On the evidence, I will show that every doctor who has been under oath on me, has perjured himself. On the evidence I will show that my said cousin and two said brothers have perjured themselves. On the evidence—documentary (in my possession), and otherwise, I will show that I am not "an incompetent person" and that I have never been "an incompetent person." On the evidence—documentary—in my possession—and otherwise, I will show that I am not "an insane person" and that I have never been "an insane person" and that I have *never* done or said anything in the slightest, in the remotest degree, irrational.

On the evidence, lastly, I will show that I have been the victim of the boldest and best plotted conspiracy since Catiline's.

You will naturally wonder how I kept from going crazy under the Hellish strain to which for now more than three years I have been subjected. The answer is

"Don't worry." I at once, on my incarceration, organized a Don't Worry club of one. I, as president, laid down a stringent code of laws by which, whenever I felt a disposition to worry, I went to work. As I always—when awake—felt a disposition to worry, I always went to work. The result is that I worked fourteen hours a day for over three years, allowing two hours for meals, and eight hours for sleep. The President of the "Don't Worry Club of One" has not had a minute of time to devote to worry in any 24 hours of any day in the past three years. I have solved thus the problem which, according to the papers of which I take and read, six (6) daily, I have thus solved the problem which apparently is exercising millions of my fellow citizens. *When worried, work.* If the worried say, "But I can't work when I'm worried! I reply, "Then you lack will-power, which is inexcusable. For will-power can be cultivated as certainly as muscular power."

I enclose you nine samples of a certain branch of my work. Nine sonnets. The poetic faculty has developed itself in me—to a certain extent, of course—the poetic faculty has developed itself in me during captivity. Apparently it required captivity to bring it out. Possibly because I was so busy following the general trend of public opinion, to wit, chasing the dollar, when at large, that the said faculty was "lost in the rush." At all events, it *has* developed to considerable extent in captivity. The said nine sonnets are not "choice specimens," not big strawberries at the top of the basket, but that is the way the lot grades. The said nine sonnets are exhibited merely as samples, as sample sonnets, they all grade up, to them, they are all "up to sample" and none are off color. I have written within the past two years two hundred and fifty-four sonnets: two hundred and twenty-four were written within the past twelve (12) months; in other words,

just after I was declared "an incompetent person" by a New York City Jury, and a Justice of the Supreme Court of the State of New York. Comment is superfluous.

In closing this Pandora's box:

First: Speed and secrecy are the watch-words. As you may infer from this letter, I mean war. No compromise with man, institution or State, in the remotest degree connected with this rascally conspiracy. I have bided my time, and I propose to reap now and *suddenly* the reward of patience. I am in a position of the gravest possible peril. Through the present iniquitous laws of the State of New York I am an outlaw.

Prescott Hall Butler may have me overpowered at any hour of the day or night he chooses, and shipped, drugged, to any point he desires. I am utterly at his mercy, and without defence in law. No negro slave was ever tighter shackled to serfdom than I am and have been for three years. He and his gang know that I'll "blow the Gaff" once I get into court. He and his gang know that my trial in open court means a special session of the Legislature at Albany (if it be not sitting at the time), demanded by an outraged, a *terror-stricken* public, to repeal laws by which any man or woman happening to be within the boundaries of the Empire State can be haled to a madhouse cell for life, without a hearing. It is a duel to the death between me and the Society of the New York Hospital and its allied Private Insane Asylums—with which this State is honey-combed—and their allied "Medical Examiners in Lunacy" whom I'll prove on the evidence to be a gang of professional perjurers, a gang of "cappers" and "barkers" and "pullers-in" for the Private Insane Asylums with which the Empire State is *mined*. I'll prove that on the evidence, "The State Board of Lunacy" is a farce of the most criminal description. That it is little better than a ring—apparently—run for "boodle." Knowing all

that I've picked up from three years' detective-like observations, my trial in *open* court would mean an expose second only to that of the Tweed ring. The most dangerous side to this affair is the fact that *all* the guilty parties are men of culture, learning, wealth or prominence. The rascals in my criminal drag-net are all gilt-edged. The role I am called upon by circumstances to play is not of my own choosing. It was—on the evidence—forced on me—down my very throat. I am pilloried before New York, first, as a dangerous maniac; next as a damn fool. Between the devil and the deep sea, eh! The *only* way I can prove that I'm neither dangerous or silly is to show up the rascality which accused me of so being. I have no choice. My own proper self-respect will not admit of my skulking out of the side door of my cell on a compromise which, to cover up the family and widespread social scandal my case will mean, I were to admit that I have been both insane and incompetent. My record of endurance and patience proves that I'm prepared to take *all* the risks, and suffer *all* the insults and indignities that lie between me and an honorable vindication. Liberty with a smirched name has no charms for me. I demand justice. And I pick Delos McCurdy as a man of the necessary learning, skill and courage to give it to me. Should he not take my case, my second choice is ex-District Attorney Francis L. Wellman, and should he prove unavailable, my third sturdy choice is counsellor Abraham H. Hummel. Mine is a fighting case, and I want fighting lawyers learned in the law. No legal dudes of whatever wealth, position, or notoriety need apply!

As my agent, I look to you for getting reasonable terms for legal services. Remember it is a case of a brother lawyer in a hole to a brother lawyer *out* of a hole. Remember also the $15,000—not counting extras—of which I have been practically robbed during the three

years last past, at five thousand ($5,000) dollars per, not counting extras. This, of course, must all be refunded me with interest—not of course, as damages, they're "another story," but merely by way of business. Remember also the damages which glitter on the legal horizon. Bearing all this in mind, it strikes me that five hundred ($500) dollars would be about right for the legal fee for bringing the Habeas Corpus proceedings alone. All the other suits are, of course, outside of that.

N. B.—There is a bare possibility that Wellman may possibly be retained by some other party or parties on "the other side." I mention this by way of caution in case it comes his turn to be approached for me by you. I've heard the other side think I want to employ Wellman. They might retain him to checkmate me. It's a decidedly off chance, though.

To conclude. In approaching any or all of the three lawyers named above, first bind them over to the strictest professional secrecy touching what you are about to propose to them. Thus, even if they are engaged by "the other side" they can't use the fact that you are attempting to employ a lawyer against me. Remember I am in a State—owing to the laws of New York—of complete *outlawry*. There is nothing to be done by any of the three lawyers aforesaid until I mail you my commitment papers and the said "long letter" *except* look up the two points of law I have made. After I have mailed you the two above said documents, and the lawyer engaged has digested them, then he, or you for him, may make a date and place of conference within the six miles radius of my afternoon walk. I'm out from 2 P. M. to 5:45 P. M. any fine day. Until then address me, writing *very* legibly—for there's a place called Mt. Kisco *beyond* my six mile radius—address me as follows: James Chilworth, Kensico, Westchester Co., New York. Kensico is off the railroad. To insure my

getting your mail please *always register* and charge to my account—all letters to me. *Never* under any circumstances, address me here, or under my right name at Kensico. Secrecy of the most professional nature should cover all our slightest actions, *until* the happy day that sees me in court on a habeas corpus writ.

Then, with one of the most modest of the New York daily's I shall say "Publicity! Publicity! Publicity.!"

Hoping to hear from you by return mail that you got this, and will accept my proposition.

Faithfully yours,

JOHN ARMSTRONG CHANLER.

P. P. S.—I'll not have time to read this over, so please pardon mistakes in spelling. This is to be mailed by me from Kensico.

J. A. C.

P. P. S.—As insurance clause, the following: If at any future time any of your letters to me goes unanswered for over *two weeks* (2 weeks) (I allow that as margin for bad weather or illness), in that case you may know that my counterplot—so to speak—has been discovered by the authorities here, and that I am once more a "close prisoner." In that, I hope, remote contingency, you and the lawyer you engage for me must proceed without my help until you get your habeas corpus writ, and so drag me into the light of day. This "insurance clause" goes into effect immediately. Lastly. If *none* of the three named lawyers will take my case, I'll leave it to you to pick a lawyer for me. As the best legal talent in New York will be employed against him, he must be older than you—my old class-mate, or myself. He must be a battle-scarred veteran, where you and I are yet young in years.

J. A. CHANLER.

George H. Barnes, Esq.,
Attorney and Counsellor,
52 E. 19th St., New York City.

P. P. S.—If you accept my proposition, please be sure to keep this letter, as I've had no time to take a copy of it. If, for any reason, you do *not* accept my proposition, please return it to James Chilworth,
Kensico,
Westchester Co., New York.
under a *register* stamp, and mum's the word, and no harm done.

JOHN ARMSTRONG CHANLER.

The Society of the New York Hospital,
White Plains, New York.
April 5, 1900.

Confidential.

George H. Barnes, Esq.,
Attorney and Counsellor,
52 East 19th St., City.

Mr Dear Barnes:

I am writing this, as you see from the heading, at "Bloomingdale." I shall post it from Kensico to-morrow if I find a letter there for James Chilworth saying that you accept my proposition. Should your said letter require anything of an answer, I shall post this at once, and answer your letter when I get back here: as I get to Kensico only fifteen minutes before the mail stage leaves that place, and should therefore not have time to write at any length there.

I enclose the *certified* copy of my commitment papers, and the "long letter tearing the papers to pieces" —mentioned in my last letter to you—and also a page from a certain novel which has an important bearing on the said "long letter" which importance will appear on reading the letter. I also enclose the post-marked and dated envelope in which the above documents were

mailed James Chilworth by the gentleman whose name appears on the front of the said envelope—he placing his name there himself.

Lastly, I enclose a letter from the said gentleman written in 1897, on receipt by him of the said "long letter."

In closing, I need hardly impress upon you the *vital* importance of keeping the said "long letter" *intact*. I am willing to bank on that letter before any learned and upright judge in the U. S. to successfully refute any and all charges as to lack of mental balance on the part of the author.

Faithfully yours,

N. B. Address all mail
James Chilworth,
Kensico, Westchester Co., New York.

Kensico,
April 6, 1900.

Geo. H. Barnes,
Dear Barnes:

Yours of the 5th inst. to hand. Many thanks. Let me know that you get this. It is too large an envelope to register, so I use special.

Very truly yours, Chaneler
JOHN ARMSTRONG ~~CHALONER.~~

By Witness: The letters I wrote to Barnes I wrote the last year I was in "Bloomingdale," and the letter to Captain Micajah Woods I wrote the first year I was in "Bloomingdale."

By Counsel for Plaintiff: We file the letter and envelope to W. G. Brown, and the letters and envelopes to George H. Barnes, and the torn off portion of the envelope, and ask that they be marked for identification and made a part of the evidence of this case.

Said exhibits are marked "Plaintiff's Exhibits 42, 43, 44, 45."

By Counsel for Defendant: We except to the introduction of these letters as irrelevant.

By Witness: I now produce the sonnets which were enclosed to George H. Barnes, which I will not read, but will call their numbers and titles, as follows:

Sonnet 1. "Roll Call."
Sonnet 2. "In the Trenches."
Sonnet 3. "An Affair of Outposts."
Sonnet 4. "Destiny."
Sonnet 5. "The Draconian Laws of Chance."
Sonnet 6. "A Prayer to Providence."
Sonnet 7. "Journalists."
Sonnet 8. "To the Legal Profession."
Sonnet 9. "Pro Boer or Algernon Charles Swinburne."

By Counsel for Plaintiff: We now file the nine sonnets which Mr. Chaloner has given the numbers and titles of, and ask that they be marked for identification and made a part of the evidence in this case.

Said sonnets are marked "Plaintiff's Exhibits 46-A, 46-B, 46-C, 46-D, 46-E, 46-F, 46-G, 46-H, 46-I."

By Counsel for Defendant: We except to the introduction of these sonnets as irrelevant.

* — * — * — * — * * * * *

RESEMBLANCE OF PLAINTIFF TO NAPOLEON BONAPARTE—17-20; 66-67; 69-73.

Q. Mr. Chaloner, in the history or course of your experience since you were committed to "Bloomingdale" Asylum has any reference been made at any time, to your knowledge, by alienists connected with this case, as to your having

stated that there was, or might be, some resemblance in your profile and that of Napoleon Bonaparte?

By Counsel for Defendant: We except to that question. Any opinion of the alienists must be given at first hand, and not through Mr. Chaloner.

By Counsel for Plaintiff: But the opinion is a matter of record. * * * * * * * * * *

A. By Witness: In the commitment papers, dated March 10th, 1897, it is stated that I went into a trance-like state in which I frequently spoke French and that I said that the color of my eyes had been changed, and the shape of my ears and nose *had* been changed *so that I resembled Napoleon Bonaparte; whereas, what I said in the trance was that my eyes had been changed, the color of them*, and that the shape of my nose and ears *would change so* that they would resemble those of Napoleon Bonaparte—Napoleon the First. This was said in a trance, *and I did not believe a word of it, and said I did not believe a word of it, when questioned by Dr. Moses A. Starr as to whether or not I did believe what I said in said trance-like state.* Well, I thought nothing of it, because I knew jolly well that I did not resemble Napoleon Bonaparte, with the single exception of my chin and jaw; that I did have a resemblance there, as any man who has a strong chin and jaw does. The ears I had not examined; the nose I knew was not like his, because he had a prominent nose, and I did not, so I thought nothing more of it. There were other things said in that trance at the Hotel Kensington, which I shall refer to later, of a different nature; but as to this resemblance to Napoleon Bonaparte I dismissed it from my mind, thinking it was an oracular statement, by which I mean a false statement, because all the ancient oracles of Greece,—for example, the Delphic Oracles,—were known as dark sayings, that is obscure, and there is always something false in every oracular statement, or something which requires inter-

pretation, or which must be eliminated, so I felt that this was an absolute lie, stated in the trance, that I had said that I would resemble Napoleon; I knew that trances were extremely fancy in their prognostications. My attention was first drawn to the fact that I resembled, or was alleged to resemble Napoleon Bonaparte, by an article in the New York Tribune, and this Tribune article said as follows, in a full page broadside, dated October 20th, 1907, under this caption, "The Chanler Family by No Means Ordinary," and putting me in the same category with Ex-Sheriff Bob Chanler and Lieutenant Governor Lewis Stuyvesant Chanler, and also with Ex-Sheriff Bob's celebrated stallion, which he allows to stand free, and which ran him in as sheriff, and under my face is written "He is said to be able to go into trances, in which he impersonates Napoleon." It struck me that there might be some "milk in the cocoanut." I thought if the Tribune said there was something in it, it was worth looking into. This is what the article said:

> "On September 20, 1901, a man with a smooth face stepped from a morning train at Richmond. There was something about the high, broad forehead, the distant look in the eyes, the drooping but firm lips and the strongly chiseled chin that reminded one a little of the idealized portraits of Napoleon I. This man was John Armstrong Chanler, the oldest of the present generation of the Chanler family and the first husband of Amelie Rives, the novelist." * * * * * * *

By Counsel for Plaintiff: I now file the page of the New York Tribune, dated October 20, 1907, from which Mr. Chaloner has just read the extract and ask that the same be marked for identification and made a part of the evidence in this case, and same is marked Plaintiff's Exhibit No. 24, J. A. Chaloner's Deposition 1911."

Witness continues: That first got me to thinking possibly there might be some resemblance. I looked at the photograph and saw a pretty hazy resemblance. Napoleon's eyes

are rather oval shaped, whereas those are round in that photograph and rather prominent, and his are deep set. That photograph was taken in 1904 which is there printed; this in 1908 (four years later), which is printed in this article in the Richmond Times-Dispatch. This article is entitled "John Armstrong Chaloner, of Merry Mills, (The Times-Dispatch, Richmond, Va., Sunday, November 22, 1908) The Man Who, Single Handed, is Fighting for His Fortune and Liberty Against the Powerful Family of which He Was Once the Head." And down in the body of the article this is said: "A stranger meeting him for the first time is instantly struck by his remarkable resemblance, full face, to Napoleon Bonaparte." He saw me in 1908 and that photograph was taken in 1904 (points to 1904 photograph) and it seemed that a change had taken place in my face, and I began to look at it. This man was very conservative—this Mr. Waldon Fawcett—very conservative, very cool, not in the slightest degree magnetic, but very pleasant and friendly, and his stating in this article that I resembled Napoleon began to make me look at my face, and I saw some changes in the face, and had a photograph taken of which this is a copy. I have since had others, and the change is more and more marked, and if this photograph slightly resembled Napoleon Bonaparte and if this strongly resembles him, why, one I will produce in a few minutes is strongly like him. This was taken last month by Homeier & Clark, leading Richmond photographers, who took the one in 1904.

Q. By Counsel for Plaintiff: Mr. Chaloner, have you any further statement you desire to make in connection with the resemblance of the photograph of yourself and the photograph or engraving of Napoleon Bonaparte?

A. Yes, briefly. I have received a copy of a newspaper, the New York World, dated October 4, 1911, in which there appears an article under the following caption: "John Armstrong Chaloner's Resemblance to Napoleon," followed by two cuts, one of Napoleon and one of myself. Under the cut of Napoleon is written, "Napoleon Bonaparte," and under mine

is written, "John Armstrong Chaloner, His Latest Photograph." This is the first time that that photograph of mine, the full face, taken by Homeier & Clark, Photographers, of Richmond, Va., has appeared in print.

* * * * * * * * *

The chin is almost identical, and the lips and the line of the jaw are absolutely identical, if you make allowance for the superior avoirdupois of the Emperor over myself, he weighed more than I do—for his height, anyway. He was 5 feet 6, I, 10¾. He was full bodied, but not as fat as he was made out, it was awfully exaggerated about his fat.

Counsel for Plaintiff: I now file copy of The New York World of October 4, 1911, containing the cut of John Armstrong Chaloner and Napoleon Bonaparte, and ask that the same be marked for identification, and made a part of the evidence in this case. The same is accordingly marked "Plaintiff's Exhibit No. 25."

Counsel for Defendant: We except to the introduction of the said paper as irrelevant and hearsay.

Witness: I also had shown me today a copy of the New York American of October 5, 1911, in which the following appears: "Sane says 'Napoleon' Chaloner." This is one of the things I have to stand. "Napoleon" is in quotation marks. The paper says, "He looks now like the Corsican," "The Metamorphosis of John Armstrong Chaloner," which is followed by two cuts, one of Napoleon Bonaparte and one of Chaloner. The one of the Emperor is a photograph of the exhibit which I put in yesterday as being a photograph that I myself had taken of the bust of the Emperor which I myself had imported, and chose in the Louvre Museum of Paris in the summer of 1894—the last time I was in France or in Europe I imported this bust and had it photographed. Underneath is written, "Photograph submitted by Mr. Chaloner to show how he has grown to represent Napoleon. On the left is a

recent picture of him, on the right a photograph of rare bust of Napoleon." That is true—that it is a rare bust. I myself, as I said yesterday, had never seen the bust anywhere but in the private room at the Louvre where they model busts, where they sell busts. I never saw it in the Louvre—never saw it in any of the metropolitan museums, nor at the British Museum, nor at Madrid, nor anywhere. I had never seen a photograph of it, and I had this taken so that I could get a profile of the Emperor when we were about the same time of life. The usual representations of his face in profile were when he was lieutenant of artillery, or about that time; the next were taken when he put on more flesh. In this photograph of mine there is every indication that my nose had increased in length and height, that is, the very latest photograph. I had a suspicion that this extraordinary state of affairs was going on and had this photograph taken on the 27th of September, 1911—I had four profiles taken—put in yesterday's evidence, two of the right side of the face and two of the left side, to show, first, that my face is not asymetric, and, second, to show that I am not bald, and that, therefore, it is important in this case, because the increased width and height in the forehead would be naturally reduced to an absurdity if that was produced by a cessation of the growth of the hair where the hair should grow on the forehead, which is not the case. For that reason I had this exhaustive series of profile photographs taken—a double set of the profile of the face, two of the right side and two of the left side.

Q. When were these photographs taken, Mr. Chaloner?

A. The 27th of September, 1911.

Counsel for Plaintiff: We now file copy of the New York American of October 5, 1911, and ask that the same be marked for identification and made a part of the evidence in this case. The said exhibit is accordingly marked "Plaintiff's Exhibit No. 26."

Counsel for Defendant: We except to the introduction of these exhibits as irrelevant and because the article is heresay.

Q. Mr. Chaloner, in your previous answer you state that the height of Napoleon was 5 feet 6, and yours 10¾—what did you mean exactly by that?

Counsel for Defendant: We except to that as irrelevant.

A. I mean what I said—I mean, of course, five feet ten and three-quarter inches.

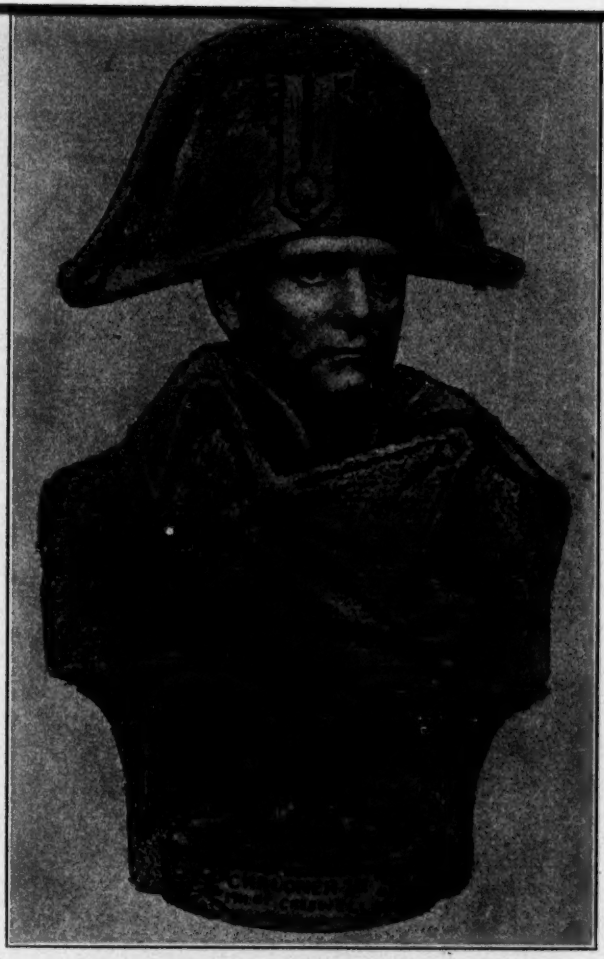
Q. Are there any other photographs you desire to introduce in connection with the similarity and resemblance that you have testified to between yourself and that of Napoleon Bonaparte?

Counsel for Defendant: Same exception.

A. Yes, two photographs.

Q. Kindly describe them?

A. Two photographs taken by Homeier & Clark, of Richmond, Va., in March, 1908. These were to have been put in evidence yesterday, but in the rush of multitudinous photographs which I was managing, these were lost temporarily and I did not remember them until the hearing was over. These are of considerable interest in that they show the evolutionary development of the frontal bone of the forehead and also the change in the thinness of the upper lip before noticed. The forehead of the early photographs of the plaintiff (those of 1889, for instance) show a practically square forehead, that is to say it does not come to anything approaching a point at the top where it joins the hair and the photographs taken over twenty years later by Homeier & Clark, September 9, 1911, show also a non-peaked or pointed forehead, whereas these two photographs taken in March, 1898 (absolutely untouched) show a forehead which, if it is not



THE NEWS LEADER, Richmond, Virginia.

More Daily Circulation Than Any Paper Published in Virginia.

John Armstrong Chaloner, October 5, 1911.
"The Merry Mills,"
Cobham, Virginia.

Dear Sir:—Permit me to make tardy recognition of the receipt of your latest photographs, which were sent me several days ago by Homeier and Clark. I thank you for them.

Under separate cover I am mailing to you a photograph of you attired as Napoleon, made in this office by our artist, Mr. Criswell. I trust you will pardon our taking the liberty of decapitating you, but we promise not to repeat the offense. For the dual reason that you may care to have the picture, and that we may not have occasion to use the picture again in view of the fact that we have a newspaper "cut" of it, I am presenting the likeness to you. With it I am sending you a copy of the *News-Leader* to show the connection in which the picture was used.

As I remember, you sent to the Fair last year "The Sire of Dolgorouki"—and said you would send the real "Dolgorouki" this year. If you intend doing this, I would like to have a picture of his highness.

Thanking you again for the photographs,

I am, yours very truly,

LOUIS A. MACMAHON.



pointed, I would like to have the proper term applied to it. These are taken at different angles, three-quarter face, one of the chin up and the other of the chin down. These have never been given to the press. I do not care to give them to that. The remarkable thing about this is that the photograph taken by Waldon Fawcett, put in evidence yesterday, and printed in the Richmond Times-Dispatch of November, 1908, shows a practically square forehead, the forehead I expatiated on at so much length yesterday with pain to myself and my hearers, and in the brief space of eight months the forehead is completely metamorphosed.

By Counsel for Plaintiff: I now offer these two photographs of 1908 in evidence, and ask that they be marked for identification and made a part of the evidence in this case. The said photographs are accordingly marked "Plaintiff's Exhibits Nos. 27-a and 27-b."

By Counsel for Defendant: The introduction of the said photographs is excepted to for the reasons heretofore stated."

Q. Mr. Chaloner, is there anything further you desire to say on this subject at this time?

A. Not another word; I am completely emptied out on that subject.

"PYTHAGOREAN TRIANGLE OF PSYCHOLOGY, THE," 409-420.

THE X-FACULTY OR THE PYTHAGOREAN TRIANGLE OF PSYCHOLOGY.

By J. A. Chaloner, A. B. A. M.

Palmetto Press, Roanoke Rapids, N. C.

THE X-FACULTY

OR

THE PYTHAGOREAN TRIANGLE OF PSYCHOLOGY

BY

J. A. Chaloner, A. B., A. M.
(Member of the Bar)

Author of
"Chaloner on Lunacy, or
The Lunacy Law of the World,"
"Scorpio," etc. etc.

Being a study in Advanced, Experimental, Physchology; called "Advanced" because the *religious* side of the soul is given as much study, honour, and respect, as the *scientific* side of the soul: while Philosophy, being the unbiased meeting-ground of religion and atheism, is the battle-ground whereon Conscience and Science meet and strive; and as the one or the other triumphs, so is the soul white or dark.

The meaning of the word Psychology, we employ, being utterly antagonistic to the modern, ignorantly-false, meaning, is that given by the originators of the word—the ancient Greek Philosophers. Pythagoras, Socrates, Plato, and the like—being a search for the discovery of a soul—to see, if man possessed one, what it was like.

SECOND EDITION

1911.

Palmetto Press, Roanoke Rapids, North Carolina,

50c. Delivered.

CHAP. I.

We do not desire to alarm our readers with the somewhat formidable title we have chosen for our extremely brief work, upon, however, a subject of rather large importance.

The first edition of "The X-Faculty" will be hardly as much as a *brochure*. It will merely "stake" our "claim" as to being the first that we know of who has made so simple and uncontrovertible an attempt at spanning the chasm between Religion and Science.

As our researches into the brain and mind increase, from time to time, we shall publish further editions.

The reason why we are able to make good the above somewhat startling claim is, that, apparently—unless we are to expect a reversal of the wheels of History, and have old time miracles as of yore—Psychology is the only field for investigation (all churches—without offence—having absolutely exceptionlessly no power of miracle) for considering (1) as to whether or not one has a soul, (2) what that soul is like here below (3) whether it is is immortal, and has a life beyond the stars, *or on some star or stars*. The above being granted, a prerequisite to investigation in the realm of Psychology is the possession, of the only person, or thing, on earth, that has ever in the history of the world, lifted, even slightly, the veil that shrouds the subconsciousness of man from his consciousness; the subliminal-self from the supra-liminal self, the X-Faculty from the *ego*, or ordinary thinking individuality, of any given man or woman; the aforesaid prerequisite being a "medium" "psychic" or "automatist," as one prefers, in the history of the development of Experimental Psychology.

That prerequisite we possessed in ourself—being, as the late Professor William James, M. D., Professor of Psychology at Harvard University, says of us in the November 6th, 1901, proceedings at Charlottesville, Virginia: "of a strongly mediumistic or psychic temperament." The late Thompson Jay Hudson, L.L. D., whose opinion is also found in said proceedings, author of "The Law of Psychic Phenomena,"

says we have discovered a great thing in Psychology. This is an advantage no University-bred Psychologist has ever possessed before. In a word, all other experimenters in Experimental Psychology have had to *hire* "automatists." They thus could only observe at second-hand, as it were, and were not able to *feel* the sensation, or note the *lack* of sensation, when in a trance or trance-like state—the only states in which any Psychological discoveries are made—and more important still, were utterly unable to communicate, as *we can*, with this absolutely unknown faculty in the mind—X-Faculty, or Unknown Faculty—which can think without our will or conscious ratiocination; *as can conscience;* and the opponent of conscience, Temptation-Arguments. We all are aware that the workings of conscience are automatic. God knows we do not desire over-work upon the part of conscience. Whether we desire over-work upon the part of Temptation-Arguments is another question; for forget not that the Temptation-Arguer never brings anything but pleasures in *his* hand.

The understanding of said little *brochure* cannot be accomplished without thought. Most people do not think straight—we mean logically. Logic is a science as much as law, which depends upon logic, is a science. Law cannot be learned without years of study—no more can logic. Who of our readers could render a reason for any statement he made, which would hold water from the scientific attack of a trained thinker; and the only trained thinker on earth is a professional logician, a teacher of logic at our schools, colleges and universities—lawyers are half trained thinkers only; for, with lawyers, into the pure font of logic is thrown the poison of sophistry; which arises from the fact that all lawyers are lesser or oftener feed for attempting to make to twelve men the worse appear the better reason—a lie, the truth.

We do not propose to spend time making our readers think—we refer them to a modest, but comprehensive little commentary and guide to the ignorant-thoughtless, entitled "The Laws of Thought," consisting of even more modest five pages in Jevons—the standard text-book at present in Eng-

lish and American Colleges—"Lessons in Logic." After our readers have thoroughly mastered said five pages teaching them how to think, then they might dip into a little—very little—Geometry and learn precisely so much, and no more than shall enable them to cross the so-called "Bridge of Asses," originated—if we remember right—by that great Philosopher of Greece, and also Mystic, Pythagoras, which holds that the square on the hypothenuse of a right angled triangle is equal to the sum of the squares on the other two sides.

Lastly, let the aspirant, after attaining secret and hidden knowledge of the soul, read Dr. Thomson Jay Hudson's popular book, free from obfuscating scientific verbiage, aforesaid, entitled "The Law of Psychic Phenomena"; "Studies in Psychical Research," by Podmore, M. A., and that interesting work by Theodore Flournoy, Professor of Psychology at the University of Geneva, Switzerland, not forgetting its interesting preface by Samuel B. Vermilye, entitled "From India to Mars, A Study of a Case of Somnambulism." Lastly, those half dozen pages or so, touching upon automatic writing and talking, by said Dr. William James, of Harvard University, in his standard work, entitled "The Principles of Psychology."

PYTHAGOREAN TRIANGLE OF PSYCHOLOGY.

(Second Edition.)

CHAPTER II.

Assuming that the reader has put himself by way of understanding what is about to follow; by digesting the aforesaid books and excerpts from books; we shall now proceed as though the reader were equipped to think, and, what is more to the point even than that, think honestly.

No one can logically and honestly deny that *Conscience is* automatic. No one can logically and honestly deny that *Temptation* is automatic. No one can logically and honestly deny that *Common-Sense* is automatic. *Therefore everyone,*

not a fool, or a lunatic, has three automatic faculties, daily, hourly, and frequently oftener, at work within him.

We shall not expatiate upon the startlingness of the above statement.

To resume. *Mediums, Psychics,* or *Automatists*—as one prefers to term said gentry—have a *fourth automatism,* which is variously regarded as the *Subconsciousness* in action, the *Subliminal-Self* in action, or the *X-Faculty* in action. Spiritualists claim to believe that said *fourth automatism* is a spirit of a dead person in action; but we spurn such a superstitious, utterly unproved assertion; and content ourselves with belief in the X or *Unknown-Faculty* in operation. We maintain that said *Unknown-Faculty* is fully as equipped as either *Conscience, Temptation,* or *Common-Sense.* We maintain that said Unknown-Faculty is far better equipped than is the personality of the person himself; by which we mean the *ego,* stript of Conscience, Temptation, and Common-Sense. We maintain that said Unknown-Faculty is by far the best equipped faculty in anyone's mind; by which we mean that portion of everybody's brain that is sentient, conscious and active; namely, the mind; as distinguished from that which contains it, namely the brain.

We maintain that said Unknown-Faculty is the source of all "inspiration," technically so called; in the Arts and Sciences, and Mechanics, not strictly moral or religious; which strictly moral or religious inspiration has its source largely—if not exclusively—in Conscience.

We maintain that said Unknown-Faculty has a mysterious attribute known as *premonition,* which is strictly akin to instinct in animals.

We maintain that said Unknown-Faculty has the attribute, in a more or less limited degree, of *Clairvoyance;* which is merely an extension of premonition.

We maintain that said Unknown-Faculty is the source of all "*ideas*" as contra-distinguished from "*thoughts.*"

"*Thoughts*" are distinguished from "*ideas,*" in that thoughts are the conscious, direct result, of conscious cerebra-

tion, ratiocination, and thinking. While "ideas" are, so to speak, gifts from the dormant, quiescent, non-consciously-active-portion of the *cerebrum*, known as the brain, to its opposite in said above respects, namely, the consciously thinking, actively pulsating, mind.

To close, and terminate, this little book, briefly, we shall content ourselves by saying, that we are the sole, only, and unique, individual, in the history of civilization, who has, so to speak, *harnessed said Unknown-Faculty of the brain;* and thus got it to do literary work for him; which he was totally incapable—from lack of literary ability—of accomplishing before said harnessing was, after *years* of effort, achieved; which work brought him fame from critics capable of judging of the product of his pen; as well as a round price for each copy of "*The Lunacy Law of the World*" which, upon demand, he was able to supply the trade.

FROM DEPOSITION OF JOHN ARMSTRONG CHALONER AT CHARLOTTESVILLE, VA., OCTOBER, 1908.

"227th Q. The eighth statement, (in the Commitment Papers, dated March 10th, 1897), is that you said: "the spirit commanded you by its voice, which you heard," what have you to say about this?

A. That is utterly false. There was no commanding about it; but when I entered a trance-like state, aforesaid, of which I was perfectly conscious, had my eyes open, could hear myself speak, I said I heard my own voice, and so did everybody else in the room; it was my own voice. It was this sub-consciousness, using my labial, and vocal organs, and breathing apparatus, to speak; but it does that with all so-called mediums, or psychics, or automatists—I don't believe in spiritualism.

228th Q. Have you ever read any works on Psychology?

A. Yes.

229th Q. State what works on Psychology you have read?

A. I began the works on Psychology which was taught at Columbia way back in 1882 or 1883. I was first drawn to Psychology later, by a book, "The Law of Psychic Phenomena," by Thompson Jay Hudson, LL. D. This book was first printed about 1895, if I recollect rightly, and received the considerable literary countenance of being reviewed by the Sunday reviewer of the New York "Sun," one Hazeltine. I read this and bought the book. That was really the first notion I got of this modern discovery, that is, discovered in the last decade, or last twenty years.

230th Q. When did you read that?

A. About 1895 or 1896. I am not certain about the date. That opened up these discoveries, which had been carried on, on "the dead quiet," in a semi-disreputable manner, by these so-called mediums: that is to say, they would cheat, they would prophesy the future, and sometimes hit, and sometimes not; but after a while learned men like the late Prof. James, of Harvard (I mention him particularly because he is the chief of that form of Psychology) began to take interest in this hitherto disreputable form of human phenomena; and finally, with other scientists, hired a medium, known as Mrs. Piper, a perfectly reputable lady of Boston, Mass.—husband living, and they living together. She was engaged by an organization of great force—that is great force of intellect—known as the Society of Psychical Research.

231st Q. You have read a book by Prof. James dealing with automatic speaking?

A. Prof. William James, M. D., Professor of Psychology at Harvard University, wrote the standard book in English on Psychology. It is a large book in two volumes, entitled "The Principles of Psychology," and is published by the American Scientific Series. Is this he cites specifically automatic writing—

(By Mr. Choate: I must object to the statement of the contents of these books).

232nd Q. You have read an essay by Prof. James dealing with automatic writing?

A. Yes.

233rd Q. Any other books?

A. Yes, a book called "From India to Mars," being the mediumistic utterances of a perfectly healthy medium in Geneva, Switzerland; who goes into a trance state, is hypnotized, loses consciousness as a result of being hypnotized; and then personifies different people in history; and then imagines herself an inhabitant of Mars, and what not.

234th Q. When did you read that book?

A. I read that book the last year I was in "Bloomingdale," I think.

235th Q. Have you read any other books?

A. I have read Prof. Joseph Jastrow, President of the American Society of Psychologists, I believe.

236th Q. Any other books?

A. Quackenbos on Hypnotism.

Q. By Mr. Choate: Please tell us when you read these books—when you read James' first?

A. I read James in 1900.

Q. And Jastrow and Quackenbos?

A. I don't remember those dates exactly. I read one of Jastrow's in 1901, or it was printed in 1901, "Fact and Fable in Psychology." I have also read another by him written by him some years later, called "The Sub-Conscious," that about winds me up.

Q. By Mr. Choate: When did you read Quackenbos?

A. I cannot be sure of these dates, because they were read at different times.

Q. By Mr. Choate: Did you read Quackenbos since you left "Bloomingdale" or before?

A. All these things were read after I got back from "Bloomingdale" with the single exception of the book by Hudson, and, as I stated, I think I read the book "From India to Mars" the last year I was in "Bloomingdale."

Q. By Mr. Choate: As to the review you read while in college?

A. Those were mostly lectures—took them as they were read to us. I am an humble student of Psychology; though I am on a somewhat ancient type, or track, or vein, in Psychology; I am studying that, have been investigating that, lately; have been, lately, rather considering on that line. There are three Schools of Psychology: the *Physiological-Psychology*, the *Quasi-Physiological Psychology*, and the pure *Psychological-Psychology*. I don't say anybody else says so; I don't say it is sufficient for me to say so to make it so; that is my personal opinion; that there are *three Schools* in Psychology. The most popular, the one that has been most followed, is the Physiological-Psychology, headed by Prof. Jastrow, whom I know personally. These Physiological scientists abandon the derivation of the name Psychology, which is from *psyche*, the soul, and *logos*, a discourse, or word; in other words, *a discourse on the soul*. Modern Physiological Psychology lets the soul go whither it will, with a great question mark as to its existence, and very intelligently examines the purely physical functions of the brain; such as the nerve-centres, which are a comparatively recent discovery. Next comes this, I will call this the Quasi-Physiological Psychology. The first has been described; the second deals with an unknown quantity, namely, an effort to communicate with dead people; through the medium of Mediums, Psychics, or Automatists. It is an effort, in other words, to solve the, at present, absolutely unknown, absolutely indescribable—as regards its cause—mediumistic-trance, or trance-like state; it is a mystic science; you cannot solve it. The third and last, the pure Psychological-Psychology—and this is the School which I have now chosen—whether it existed before I do not know—I don't claim to have made a new School in psychology; but from the books I have seen, and magazine articles—I keep well up in all new movements in Psychology, as they are the things I take most interest in—it seems to me that this is new in this respect, that I go back to the pure, ancient, derivation, and origin, of the word Psychology, which is, as I have described, a discourse upon the soul. That was the Psychology

of Pythagoras, Socrates and Plato. At that time they devoted their brains to finding out if a man had a soul—that was the main thing: they may have said, "What is it like?" I don't know that, but my idea is that it is a triangle, and I have written a little work on this subject. The title of this very brief Psychological work is "The X-Faculty, or the Pythagorean Triangle of Psychology." In other words, psychology can be treated in a form—this is a symbol, of course—of a triangle, the right-angle triangle of Pythagoras, known as the *Pons Asinorum*—

237th Q. By Counsel for Plaintiff: Is that what you have learned from the books you have read?

A. No, this is my absolutely new theory, because I find nothing like it in my readings.

Q. By Mr. Choate: Was the paper which you have in your hand written by yourself?

A. Yes, it was typewritten, I wrote the original.

238th Q. By Counsel for the Plaintiff: Does that express your theory on the subject, what is contained in the paper?

A. Yes, it does.

239th Q. Do you want to file the paper as an exhibit in this case?

(By Counsel for Plaintiff: I now file as "Exhibit for Plaintiff" a paper entitled "The X-Faculty, or Pythagorean Triangle of Psychology, by J. A. Chaloner, A. B., A. M." and ask that the same be marked "Plaintiff's Exhibit P.")

Q. By Mr. Choate: Was the paper written and prepared by you unaided?

A. Yes.

240th Q. By Counsel for Plaintiff: Have you anything further to say regarding the matter you have just been discussing?

A. This imaginary symbol—an imaginary species of the Pythagorean Triangle; the right angled triangle used by Py-

thagoras in his famous Geometrical problem, proving that the square on the hypotenuse of a right angled triangle was equal to the sum of the squares on the other two sides—is tri-colored: (i. e. for the sake of clearness of demonstration, we shall consider that the three sides of the said imaginary triangle have each a different color; and also consider that the said problem has been carried out by having the said three squares erected on the three sides of the said Pythagorean Triangle)—the Hypothenuse stands for Philosophy, on which is carried on the struggle between conscience and the opposite of conscience—that is to say, the temptations which conscience fights. So as to make this illustration easier, imagine the said Pythagorean triangle to have hollow sides, and able to contain three different colored liquids—White for the Conscience, Red for Temptation, and Blue (to get a color) for the Philosophical-ground. That is, the Hypotenuse, the largest side of the triangle, the one, in other words, opposite the right angle, is the Blue plain of Philosophy, hypothetically speaking, upon which the White (standing for Conscience) and Red (standing for Temptation) liquids (*supposed liquids*), contained in the hollow Base, of said imaginary triangle, the Perpendicular and the Hypotenuse of said triangle; the White liquid standing for Conscience, in the said Perpendicular of the said triangle the Red liquid standing for Temptation in the Base of said triangle; and the Blue liquid standing for Philosophy in the Hypotenuse of the said imaginary triangle) contending, are moved by an X- or unknown, and utterly hypothetical, force. *This is a hypothesis, a guess, a mere working-hypothesis.* As to the struggle between Conscience—the Temptation side of the triangle upon the common ground or plain of combat—namely, Philosophy, which is unbiased, perfectly free to judge, and makes the Hypotenuse of said triangle—as this struggle progresses, if the White side of the triangle triumphs the soul will be of a White color; that is, the White on this Blue plain of Philosophy will have more white in it and less red; whereas, if the Red—the temptation side—prevails in the struggle between these two sides of the

triangle—one of a White liquid, the other of a Red liquid—propelled by the said unknown, and unnamed, force, with force against one another, on the said Plain of Contention, Philosophy—as the result of this contest is Red, so does temptation prevail in the mind of that man, and so is his conduct bad. That is all a hypothesis."

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Pages 297 to 336 omitted.

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Pages 297 to 336 omitted.

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WILL OF PLAINTIFF MADE BEFORE 1897, 109-118.

By Counsel for Plaintiff: Mr. Chaloner, in your will which you testified was contained in the safe deposit box, was any member of your family named as its beneficiary?

A. Only one.

Q. State the circumstances?

A. As all the members of the Chanler family, immediate members, were wealthy, and as they had shown themselves antagonistic to me, I did not feel that it was incumbent upon me to take money away from a cause of education to add to their wealth with one exception. That was Mrs. Elizabeth Chanler Chapman, wife of John Jay Chapman, a lineal descendant on the female side of the first Chief Justice of the United States, John Jay. She was my favorite sister, and the one most sympathetic to me by temperament, and who understood me best and I thought I understood her. I found out, however, that I was far from understanding that lady, and that she was double-faced, and while having a most fascinating and attractive manner she was duplicity itself. I will give an instance of her attractiveness. My affectionate cousin, Mr. "Chilly" (Chiswell) D. Langhorne, was here yesterday at this deposition and he volunteered the information to me that

he had seen a great deal of Mrs. John Jay Chapman, this sister alluded to, or rather ex-sister, because I always put that in—of course, the relationship remains the same, but I say that in order to impress on the person I am talking to that there is no possibility of any reconciliation between myself and any member of the Chanler family, male or female, now or later. They proved themselves too deadly dangerous to my happiness, health and liberty, and I having a property to which they stand in the direct line of inheriting by the way and which is the cause of *hinc illae lachrymae* (hence these tears), from Virgil. It was my money they were after, besides venting their spite and ill humor on me. Mr. Langhorne stated yesterday to me in room No. 5 of this hotel to this effect: "I have just had a most charming trip and have seen a great deal of your charming sister, Mrs. Chapman, this summer, and she looks just like you; she looks more like you than any member of the family and she is just like you in temperament." I said, "She is not as much like me as Colonel Astor Chanler." Mr. Langhorne looked blank and said, "Who?" I said, "Col. Astor Chanler." I said, "The one who married Minnie Ashley, the talented actress, who is about to recommence her stage career, I see from the newspapers she did so six months ago." I said, "The Colonel is extremely like me." Mr. Langhorne continued and said, "She is just like you, and her manners are like yours and her character is like yours." I said in effect, "That is where you miss it, I thought she was like me and that is where she took me in. She fooled me. I thought that she was honest and straightforward and frank, possibly sometimes over frank, as I am. I find that she is duplicity itself. She is the biggest fakir in petticoats, although charming in manners, with a dazzling, fascinating manner." This lady and I had been as friendly as brother and sister could be—sympathetic, and for that reason I made the exception when the breach in the family was made by my marriage to the present wife of Pierre Troubetzkoy. I am careful to specify his first name Pierre, and not call him Prince Troubetzkoy, because Prince Troubetzkoy,

the head of the family, lives in St. Petersburg. I mention Mrs. Chapman in my will—in a will in the safe deposit box in the unsafe vaults under the Bank of New York. She was mentioned, but when later in 1897 (this will was made before 1897) Mrs. Chapman visited me in my cell in "Bloomingdale" in June, 1897, she showed by her manner and language that she entirely approved of my location and of the action of her brothers in getting me in there, and when on leaving she asked me if there was anything she could do for me (or words to that effect). I said, "Yes, there was one thing—(this was after a conversation of an hour and a half, in which there was no argument, no nothing but quiet, no raising of the voice, no expletives, nothing of swearing)—after an hour and a half of allowing myself to be "observed" by her as I lay on my pallet in my cell, with my big strapping Irish keeper at the foot of my bed, and as she was riveting me with her eyes out of curiosity to see how I stood the racket—I had been in there about three months at that time—after this peaceful conversation she asked me if there was anything she could do for me, and I said, "Yes, never let me see your face again." That was direct enough and unambiguous enough for her to know that I was not particularly hankering for her society and was not particularly an admirer of her character and personality, she having gone over to these rank conspirators and disgusted me by her treachery and thereby a love between brother and sister, than which there was none stronger that I know of, was broken. She and I had been mother and father, so to speak, to the rest of the Chanler family. My father had died when I was fourteen and my mother when I was twelve, there or thereabouts, and I was the oldest boy and Mrs. Chapman the oldest girl in the Chanler family, and there were ten children then living, and she used to look after the girls, our younger sisters, and I the boys, and we would consult like father and mother about the bringing up of the younger children and their plans in life, etc., etc., which made us lean on one another in this sacred task of taking the place of our dead parents in the bringing up of their children and threw

us together in serious matters as brothers and sisters are never thrown unless they are orphans and the oldest of a family of orphans. So this was peculiarly painful, peculiarly sad and peculiarly shocking, this surprise. I have had many horrors in my life, and shocks and sad surprises, all bearing out the words of Jeremiah, "the heart is deceitful above all things, and desperately wicked." At that time I thought that was a gross exaggeration on the part of the prophet as applied to this highly civilized age, so-called, but that was when I was younger and far less experienced in the ways of men and women than I now am at the age of 49, come the tenth of this month. It was a horrible shock to me, it blasted my faith in brotherly and sisterly affection utterly and absolutely. Before that I thought there was, so to speak a bond—"blood is thicker than water"—and if brothers were brutes enough, being men they are more brutal than women—that if brothers were brutes enough to rob and assassinate their older brother, more cowardly than if they had had me stabbled, because I would respect men who hired a thug to stab me more than I would men who hire alienists to stab me in the mind and make me die in a madhouse cell rather than die after a stab in the back on the spot. So I gave women a preference, I thought they were more ideal than men. I think they are now. I had an idealized idea of women, although I had been through the divorce court, so I was not a fresh young man, I had been "through the mill" and I knew that women were not all wreathed with roses, but I did give them credit for being unable—modern civilized women—of being unable to do treacherous, cold-blooded, murderous and sordid, avaricious acts such as Mrs. Elizabeth Chanler Chapman was guilty of in leaving me to rot in a madhouse cell, where I was put by the perjurious oaths of her two brothers, Winthrop Astor Chanler and Lewis Stuyvesant Chanler, and I pointed out to her these perjuries, for I had a certified copy of the commitment papers in my hand as I talked with her, and she was in a position to know that Winthrop Astor Chanler and Lewis Stuyvesant Chanler and the Reverend Arthur Astor Carey

(Swedenborgian divine) had never so much as crossed the threshold of "The Merry Mills" in their lives. Whereas, in the commitment papers they deliberately swore, they deliberately perjured themselves in the most formal and barefaced manner, after being warned by the printed statement in that document, placed there by a wise court after being cheated and lied to by men like Messrs. Winthrop Astor Chanler, Lewis Stuyvesant Chanler and Reverend Arthur Astor Carey (Swedenborgian divine) in order to head off the perjuries of the said three gentlemen the wise law had placed a "keep off the grass" sign under the sworn statement of petitioners in lunacy to the following effect: "I have read the above statement, know the contents thereof, and the same is true of my own knowledge except as to such matters as are therein stated to be made on knowledge and belief, and as to them I believe them to be true." I omitted one thing, which is "I have read the above statement and understand its contents." Words to that effect. The devil himself could not get around that net that the law has thrown around perjury there; nobody can get through it, there is no possibility of misunderstanding that; it discounts haste; it discounts carelessness, it discounts ignorance. The law wisely shepherds the would-be petitioner and keeps him in the straight and narrow way of truth, unless he is a deliberate and abandoned criminal perjurer, as are Messrs. Winthrop Astor Chanler, Lewis Stuyvesant Chanler and Arthur Astor Carey, the Swedenborgian divine. I pointed out these perjuries to Mrs. Elizabeth Chanler Chapman. She received the intelligence with great coolness. She did not turn a hair. She knew it already from her manner. She said, cooly, after hesitating, after a silence, "Well, if they are guilty, I don't wish to protect them," which was a very Roman, Spartan saying, a good deal of a bluff, because she knew very well that I was not in a position at that time to bring those gentlemen to an account, and I am very glad now, on account of my father and mother, that the statute of limitations has stepped in and will save Messrs. Winthrop Astor Chanler, ex-Lieutenant Governor Lewis Stuyvesant Chanler

(now Assemblyman from Duchess County, New York), and last but not least our Reverend friend, Arthur Astor Carey, the said Swedenborgian divine, from wearing stripes and doing time on the banks of the Hudson for say three years or so. It is absolutely proved by the record that they were never at "The Merry Mills." I have absolute proof that they were never there in a deposition given by Mr. Winthrop Astor Chanler in 1905, *de bene esse*, on account of his going abroad at that time. Under cross-examination he admitted that not only had he never been inside my house at "The Merry Mills," wherein also acts of mine are sworn by said petitioners to have taken place of their own knowledge—they saw them—although he admits years later that he was never there, and also admits that Mr. Lewis Stuyvesant Chanler did not come down with him to Virginia at the time Winthrop Astor Chanler came down with Mr. White and a Doctor to lure me to New York. Mr. Winthrop Astor Chanler did not show himself, but he was on the same train that took me to New York. He was in another car and he does not say that Carey was there, but that he came down alone (words to that effect). He does not claim that any other petitioner was in Virginia but himself, and he did not let me know he was there and did not enter "The Merry Mills," and, therefore, must have perjured himself when he made these "Tough Long Bow" statements in the commitment papers under oath. "Tough Long Bow" was the title of a fairy story, out of print some thirty years ago, whose stories were on a par with Baron Munchausen for being far-fetched and incredible. Well, Mrs. Chapman, as I said, knowing of the perjury, stood it very well considering that it was done by two of her brothers and a cousin—faced it out admirably and said, very cooly, "Well," as I said before (words to this effect), "Well, if they are guilty I don't want to protect them." Well, I told Mr. Langhorne (to wind up this end of the statement) that Mrs. Chapman had deceived him as deeply as she had deceived me. Mr. Langhorne evidently did not believe it, which is not surprising. To resume. That is why in the later will I left out Mrs.

Chapman, because I would be a fool to leave money to a rich woman who wanted to kill me to get my money, that was the long and short of it. I would deserve to be in a madhouse after I did such a thing. So she, after my requesting her not to let me see her face again, she knew perfectly well that would be left out of the next will that was drawn, and, therefore, she had as much interest in separating me from my former will—tearing it up—so in the event of my death in "Bloomingdale" I would be without a will and my estate would vest in the heirs-at-law, next of kin (that is what they wanted) and her desire was as marked now as in the other Chanlers, since she knew that I would leave her out of the next will I drew were I lucky enough to get out of "Bloomingdale" and draw another will.

[redacted]

X-FACULTY, THE DISCUSSION OF, 127-156, 574-580, 581-592.

To resume the description of the stock market transaction—I was given to understand by my subconsciousness, or subliminal self as one chooses to call it, or X-faculty, or unknown faculty in the mind as I term it—by a species of communication described by Professor William James, this document I am going to quote from, which is already in evidence. It is a document on file here in an Albemarle County proceeding in 1901. In that Professor William James, professor in psychology at Harvard, in an opinion written in his own handwriting on an article entitled, "The X-faculty," copyrighted by me in the early fall of 1901, but not put on the market, gives his professional opinion in reply to a request from me on my psychological experiments, and he passes on a specimen I gave him of what is known as "automatic writing," or "graphic automatism." Briefly, that is where the pen or pencil writes without the operator knowing what the next word is going to be, or what the next letter in any given word is going to me. This writing is done entirely by subconsciousness, the operator simply sinks his initiative power and does not use the pencil, he allows his X-faculty, or sub-

consciousness to operate the pencil, as it were. This sounds like a ghost story, but only to the unenlightened and ignorant of psychology, to whom it is witchcraft, it is devilish or it is nonsense, all of which comments are as false as they are ignorant. I forestall the ignorant, illiterate, editorial or news comments by the above remark, for if I don't head off bright young men in the business who don't know what they write, when they do write about this case, there will be some terrible lying about it, or some terrible ignorance. I speak from experience. I speak from the experience of the editorial in the Washington Post mentioned a few moments ago. I don't propose to be the butt for newspaper lies any more as to this absolutely unqualifiedly mysterious power. I don't let the Washington Post liar say it is "mystic" without nailing his lie. Let the Washington Post editorial liar tell the truth for the first time in his life possibly, and let me lead him into the straight and narrow path of truth for once and apply the term psychological power in reference to this power of mine to write automatically, or power of graphic automatism, and not tag it with "mystic powers." I hope that is plain enough and that the Washington gentleman will respect my sincere wish that I be not misrepresented. I don't ask him to report this deposition, but if he does don't lie about me. Try hard and don't lie about me. None would have been more surprised than I on the first occasion that this graphic automatism presented itself to me. It was in December, 1896, in my billiard room at "The Merry Mills," about ten o'clock at night. I was playing pyramid pool, that kind of game known as "solitaire," the object of which is to pocket as many balls as you can in the fewest number of shots. All balls pocketed without previously naming the pockets are "spotted"; all balls pocketed on the "break" also "spotted." These are technical terms in the game of pool, which are necessary to explain, because my medical friends, Flint and McDonald aforesaid, accuse me of being "off my base," because I happened to say in a heart-to-heart talk in "Bloomingdale," in answer to their question that I could play a fairish game of pyramid pool.

Well, on this occasion the balls "broke"; that is to say, spread, being hit by my white cue ball, in a very strange manner. They represented, that is, they could have been supposed to represent, they were similar to a map of the heavens. Certain of the balls had other balls around them like moons in a circle. It suggested a map of the heavens, the irregularity of these different shapes. They did not "break" in bunches, two or three balls huddled together, but hardly one ball touched the other in all fifteen balls, but one ball would be in the center of a circle made by three or four other balls. Others would be in curves made of several balls, all suggesting signs of the heavens on astronomical maps. This was so strange to me, who had played pool frequently, that I took an envelope out of my pocket and lean't on the championship full-length Brunswick-Balke-Collender pool table and in pencil drew (I had taken lessons in drawing from a flat surface when at St. John's Military Academy at Ossining-on-Hudson, when a boy, and later in Paris from casts for a short period in an artist's studio, so I can draw enough to indicate simple surfaces)—I was drawing a map on the back of this envelope in black pencil of the juxtaposition of the fifteen balls, the diagram of the balls, the strangest I had ever seen—having already noted strange things in what I now know to be advanced experimental psychology, but at that time—previous to 1896—I did not know what it was, but having kept a series of journals, noting every strange thing happening to me such as phenomena, fully described in the record of the 1901 proceedings of Doctor Horatio Curtis Wood, of Philadelphia,—having noted these for a period stretching over many years, and this is remarkable that nothing was noticed until I left off meat. I received no premonition until I left off meat in mid-summer in 1893. Meat undoubtedly acts as a veil between the secret unknown mysterious section of the mind now tagged subconsciousness—undoubtedly acts as a veil between that and the consciousness, as proved by this experiment of mine, that I received no premonition of, or automatic writing, until after I had taken on strictly vegetarian

diet, and this force which held the curtains together during my legal work on my brief from January 1903 to May 1904—I say here I had spent six months previous on the brief—making two years in all—when I say on the brief I mean on work which went into the brief—that this force left me so soon as I left off the strictly vegetarian diet which I was following rigidly during all the period from 1893 to 1907. Therefore, I say I give no reason for it, I simply observe as a student of science—I have no theory—I simply observe that I have observed that after I eat meat this psychological power, not "mystic power," leaves me. Very well. To resume: I then placed the balls in the frame and framed them up and broke them again. To my amazement they broke in precisely the same diagram as they had previously broke—I don't say exactly in the same position but in a similar diagram. Whereupon, being a patient student of science and one capable of great detail, I took another envelope out of my pocket—at that time I had the bad habit of carrying a good many letters about me, and I am not entirely over it yet—I took out another envelope and made another diagram, and now here comes the "milk in the cream." I put the balls in the frame the third time and broke them again, and they broke again, not identically, but in the same diagram as they had done before, and if I have used the word "identical" I mean similar—that each one of the results of the breaking of the forms up in the game of fifteen-ball pool the balls made a diagram which was strikingly similar to the map of the heavens, and a different map each, but a map of the heavens, to any one that has ever seen a map of the heavens, or has ever looked at the stars intelligently. I took out a third envelope and started to plot that and had just drawn two or three balls when, to my amazement,—I have had many experiences in my life, but never was I so surprised in my life before or since, not even when I was attempted to be held up by Moses Ananias Starr and his gang of thugs, who took me from the Hotel Kensington off to "Bloomingdale" on a cold March night—I was never so surprised, for my pencil instead

of obeying my will and drawing a ball on the back of this envelope what did my pencil do? I wish to say I had been a total abstainer for years and years; I have no drink habits and I am as sane as John B. Moon, our respected Commonwealth's Attorney, or as Judge Duke, now entering the room. The proof of this is that in the commitment papers aforesaid even the doctors in the pay of the other side say, when asked the question, "Has he any bad habits?" words to that effect. "Does he use liquor or tobacco?" they give me the following clean bill of health which is awarded me by Dr. Moses A. Starr, who says, "He has no bad habits." So I can be believed when I say I was not drinking, as I do not have bad habits, for in "Bloomingdale" I never took as much as one drop of wine, beer or spirits during my whole stay there. The proof of this is that I challenge them to show any bills containing such items, and they certainly would have had bills against me for any of these things if I had gotten them. To resume. My pencil, instead of obeying the force of my forefinger and middle-finger and thumb and making a round surface to represent on my diagram a regulation standard pool [illegible]y ball, not celluloid, instead of doing that it began to [illegible] Well, it wrote three words, only three words. In or[illegible] the proper force to this statement I should say [illegible]ette is a toy that can be bought in any toy store [illegible]ty, made of wood, a flat piece of wood about the [illegible]e of or a little larger than a man's hand, heart-shaped, resting on two legs which have casters under them, little rollers, and the third leg is made up of a lead pencil. People, after dinner entertainments, often use this thing. Ladies and gentlemen join their fingers on this planchette and it will move and write. The following definition is given of planchette by Stormonth's Unabridged Dictionary:

Planchette: 1. A circumferenter.

2. A small board fitted with a pencil and two casters, made to move easily over a sheet of paper when hands rest lightly on it; once believed by some to write inde-

pendent of the volition of the person touching it but generally explained by the dominant idea.

By Counsel for Plaintiff: I now file the copy of Stormonth's Dictionary from which Mr. Chaloner had read the definition of planchette, and ask that the same be marked for identification and made a part of the evidence in this case. Said exhibit is marked "Plaintiff's Exhibit S. D."

(By Counsel for Defendant: We except to the introduction of this exhibit as irrelevant and cumbering the record.)

By Witness: The dictionary does not give, as I remember it, a positive or anything more than a vague hypothesis—I have not looked the word up for years for the very evident reason that psychology advances, and it is a very, at present, unknown study, and Professor James in his said opinion on file here says that these things are not yet understood, such as automatic writing and trance states. I don't pretend to know, but I say I will give my definition because I am an experimenter in the field. I say that I will give a more concise definition of what works the planchette hypothetically—I don't say that I know it, because since that dictionary was printed I have made investigations in this automatic writing and am qualified to speak on it, and here is the definition of that planchette writing. When it will write (of course it is not the planchette that writes, not this wooden board,) but something in the mind of the man or woman who have their fingers on this small board. When it will move the force is exactly the same force that operates my pencil, when I use automatic writing. That is a hypothesis. I don't say that I know that, but it is a more positive hypothesis than that given in the dictionary I think, because it is ten years later than the dictionary I had in "Bloomingdale." Here is a note I made in blue pencil in this standard dictionary which was bought for me by Mr. Stanford White—no, it was not bought

by Mr. Stanford White, that I got when Mr. Stanford White was visiting me in the Hotel Kensington in March, 1897, and when I went to "Bloomingdale" I had it sent after me, and it was there during my incarceration, and I made notes every time I ran across a word in my reading there, and I did nothing but read there all day, or all night—I was up until three o'clock and slept in the day and worked at night, except at two o'clock in the afternoon I started to walk. I read omniverously—five morning newspapers and three evening papers, as I remember it, published in New York, besides magazines, and then I would wind up with more serious reading, and then a novel. In the course of my reading, or writing, if I ran across words I did not know how to spell or words that I did not know their meaning I would look it up, trace the root, or what not. In this case I marked in blue pencil, and here I find the day of the month, the month and the year under planchette. I find "4|10|98," that is, April 10th, 1898. There is a picture of a planchette and under it is marked "A planchette as operated." There are two pairs of hands on the planchette in this dictionary, and the following definition "a small board fitted with a pencil and two casters, made to move easily over a sheet of paper when hands rest lightly on it." Now, this is what I underscored and here is the definition far more vague than mine, in fact "dead wrong" according to my experience, because it says "once believed by some to write independently of the volition of the person or persons touching it, but generally explained by the dominant idea." Now that is absolutely contrary to my experience in December, late December, 1896, on the new championship billiard table at "The Merry Mills," Cobham, Virginia, for my dominant idea was to draw a ball on the back of the envelope, whereas independent of my volition and in the teeth of the standard dictionary writer my pencil wrote "get a planchette." That shows who knows the most about that, the dictionary or me, looking upon the fact of my work in it since. As soon as this was done I began to think, and the instant I began to think I got on to what evidently it was

intended that I should catch on to by my X-faculty in writing this otherwise irrelevant statement, namely, that I should not be alarmed; that I should not think that I was haunted by a ghost, or a witch or demon, or what not, but this was the well known society unknown force that operated planchette in the drawing rooms of the elite and fashionable, which I had known of but had never seen work, so that this was the first introduction that I had to the present unknown purely hypothetical force which I call psychological and not "mystic." The upshot of it was that I went up stairs—and it is necessary here, absolutely, not to lose a point, to resume my defense to the attack of the Washington Post liar, he makes the brilliant suggestion, to quote "long range forecasters know just what will happen in the weather line a year ahead, and are willing to sell the knowledge for a pittance instead of keeping their information to themselves and cleaning up a million in cotton in a month, in Wall Street, in the cotton exchange." My X-faculty knowing the mind of the liars, knowing the "smartalecs" on the editorial sheets—they are not all "smartalecs" and not all liars, but there are many of them like this Washington Post liar. The very first test that my X-faculty offered to me to gain my limited scientific, cautious, skeptical confidence therein, was to write out to me as follows, when I took to my bed on leaving the billiard room —for this was rather exciting work and I found it was restful for me to write reclining. I never had before that, but on that occasion I felt excited and lay on my back, as Mark Twain was in the habit of doing when writing. (Note here that I have no grandiose idea of comparing my writing with Mark Twain's writing because he used to write in bed. I mention this as a danger signal to Starr, Flint and MacDonald, to keep them from lying about me in court, if I don't protect myself now from these liars.) I went to bed and wrote, or allowed my hand to write on a tablet: "I want to know what this unknown force, or X-force, which controls my pencil is." I need not now go into the answer to that interesting question, because I don't have to. I know very well

what the X-faculty claims to be, but I won't say, because I don't have to, and because it would unnecessarily complicate the understanding of this purely psychological experiment. I have to mention the fact that I will not draw the veil from the personality alleged, or what it is—X-faculty, or subconsciousness, or subliminal self-alleged—understand that I don't say I know what it is. I simply say I know what the X-faculty wrote on this tablet that it claims to be, and if I don't mention that now it will be an unscientific explanation that I shall give on the stand, for I then would have left unanswered the very first question that arises in any man's mind, or woman's either, who is interested in this topic. The X-faculty made certain statements as regards its identity which I frankly disclaim belief in. I will say here and now that it is absolutely removed from, and antagonistic to all forms of spiritualism or spiritism, the more modern form of spiritualism. I am anti-spiritualistic. I don't believe a word of it. I don't believe in ghosts. I laugh at alleged communications from the defunct. The "bourne from which no traveler returns" is as unknown, unexplained as it was in Hamlet's time, and nothing has ever been done by alleged mediums in spiritualism which has brought back one whisper from beyond the grave that is worth "a tinker's dam." I hasten to say that is not profane. I am not pedantic when I explain, because most people do not know; they think that "a tinker's dam" means something worthless. (I went through a special course in the dictionary derivations and roots.) I thought it meant worthless, because tinkers are frequently drunk, and the damn of a drunken man is the most worthless of all damns presumably. I looked it up and found that a tinker's dam is made of dough; it is made to guide the flow of molten solder which he uses for repairing old pots and kettles; he used something which will be cheap, because the flow of molten solder will destroy anything not made of metal that touches it. Hence he uses this dam made of dough, and it is utterly useless as soon as it has ceased to be a dam, has served its purpose in checking the flow of molten metal to

carry out his repairs. Hence "as worthless as a tinker's dam" has come to be proverbial in use, for nothing can be more worthless than the charred dough, so worthless that nothing on earth would use it, bar a hog. I have no use whatever for spiritualism. That is all I will say about what this alleged X-faculty says it is. To speak frankly I don't care what it is. As soon as it operates with me I am satisfied. After it had worked for about a half an hour of rapid writing and describing what it claimed to be—no spirit of the dead—it proposed to get down to business and said, in effect (all these writings were destroyed by me)—and said in effect: "You don't believe a word I say; I know your mind and I know what you think therefore." To which I wrote back (for this was a written dialogue—a, so to speak, Platonic dialogue). I once more flag the aforesaid doctors, Flint, Macdonald and Starr, from lying about me and stating that I compare anything that I wrote with Plato, because being a Bachelor of Arts of Columbia, also an M. A. and a member of the bar of New York of twenty-five years' good standing, and a student of history and psychology, and last, but not least, a student of the Bible, which will be touched on—I later studied that in "Bloomingdale" where I had plenty of time—I never had had time until then. I promised my mother when she gave me a Bible (it is here and will be put in evidence) about 1871, there, or thereabouts, and on the fly leaf is "J. Armstrong Chanler from his mother, Newport, R. I." And I have a prayer book from her, with an inscription about the same date; I will put that in evidence—the Prayer Book of the Episcopal Church of America," I believe it is technically called—and also a prayer book with the dedication "John Armstrong Chanler from his father, 1877." This is an English service prayer book, Church of England, given to me when I arrived in England, when I went to "Rugby" in 1877. My father went across the ocean with me. My mother, when giving me this Bible, said, "Now, my son," (words to that effect) I want you to promise to read six verses a night until you have finished reading this book." To

which I replied, "Yes, mama," and, like many undutiful boys, did not do so, but I did not forget it, and having a demoniacal conscience and a conscience that has a scorpion for its tail, so to speak, so that it can drive me out of bed at any hour of the night by giving me hell, make my mind a hell if I don't obey its behests, conjuring up all sorts of duties and of retrogression in moral force and loss of stamina, etc.,—thoroughly argued so I cannot pick a flaw in its logic—which can boss me and has bossed me for years and years. The one thing I am afraid of in this world is my conscience, not because I am good, but because my conscience is a holy terror, and I can't think of anything else without terrific will-power and sweat of brow, until my conscience is abated. Therefore, after years of struggling with my conscience I have quit. It can best me and I know it, and I hold up my hands whenever conscience draws the gun. Hence I never forgot this promise to my mother, but in the hurry and rush of my affairs I was unable to fulfill it; so when I was laid by the heels in "Bloomingdale" I said, "Well, as I had always a reserve agreement in my mind to fulfill the sacred promise to my dead mother when I had the time" (I did not feel that I was being punished for not having done it by being put in "Bloomingdale") I said, "Now is the time to fulfill the promise I made to mother" (words to that effect). Whereupon I set to work and for six months—the winter months—of all the years I was there (three years and eight months) I read six chapters a day. I thought that was paying a good fine for not having done it before. I read six chapters every night during the time I carried on my Biblical studies—I say Biblical studies, because I looked out the cross references; I studied the Bible as if I were going to take holy orders, which I was far from doing—I looked up cross references until finally I got to know and recognize references whenever I saw them. After six months of Bible reading I would lay it aside and not touch it for another six months. I have studied Greek in the original, but have forgotten it, but never have I gone through such mental effort as reading the Bible, understanding it

thoroughly and conscientiously, by which I mean, first, looking up the cross references which are necessary to elucidate an obscurity in every word or line that a person reads; second, to describe the word conscientiously, that that reading must cease the instant a thought occurs in the mind suggested by the text which has a bearing on life or manners or morals, which is a new thought to the reader; that that must be followed out and argued if it takes hours, because otherwise you forget it, and the spiritual growth you get from that day's work in the study of the Bible will be lost. I conscientiously, diligently and intelligently read the Bible and found it exhausting work; I dropped it for six months and took it up again at the end of six months. Therefore, when I finished it from Genesis to Revelation, I had a comprehension of it which has been an unspeakable help to me in guiding me over the stormy sea of life. I simply mention that because I want to show that I have a right to use, as an American scientist, what words I choose to without being accused by unscrupulous alienists and "head-hunters," assassins and thugs of having a diseased brain and thinking that I am the reincarnation of Plato because I used his name to illustrate a point in the deposition, and these men, Starr, Macdonald and Flint, are such unprincipled dogs (on the record) and unprincipled rogues so far from gentlemen that there is nothing sacred to them, and they would criticize a man for reading the Bible as much as they would for reading a bawdy book. In fact, when Starr saw the Bible, which I frequently traveled with and had with me in the Hotel Kensington, on which I had made marginal notes, he made the involuntary remark "all marked up" and threw his hands up, as much as to say, "the man is as crazy as a bedbug." For that reason I safeguard what I have just said about Plato. This conversation was carried on in the form of a dialogue. To save time I would enclose in brackets, my remarks, and the X-faculty remarks would not be enclosed in brackets, and in this way I could tell who was talking. The X-faculty said, "You don't believe any of my remarks." I wrote, "No." It wrote, "I don't blame you.

you want proof. Would you be more inclined to believe that I had possibly some truth back of me if I were to tip you off to the movements of "eights" on Wall Street, on the stock exchange market?" Now we are getting back to the Washington "Post" lie. I said, "Certainly, I will; if you make good I will give you all the credit that your goods call for." (Words to that effect). The X-faculty said, "Order your horse and buggy and drive to Gordonsville." It was about midnight, or certainly as late as half-past eleven. I had never taken a train from Gordonsville at night and did not know there was a train from Gordonsville to New York, not having occasion to go from there at night. I said, "I did not know there was a train from Gordonsville to New York at night." The X-faculty said, "If you are going to operate with me I will have to ask you to have the civility to take what I say as true, unless you know it to be really dangerous"; and said, "will you order the horse"? I said, "Yes." I ordered the horse, not knowing there was a train to New York. The X-faculty said, "You will catch that train, but drive fast." I said to the X-faculty, "How much money shall I invest?" The X-faculty said, "How much have you?" I said, "About $600 in bank. I haven't got any money to throw away, but I have got that to test the clairvoyancy of this tip you have given me." I said, "What stock shall I invest in?" The X-faculty said, "I shall operate with you on the principle of the great Greek philosopher and "mystic" Pythagoras; I give no reason for my remark." It was said of Pythagoras it was *ipso dixit*, meaning "He has spoken." I think it was Pythagoras of whom this remark was originated; I won't swear to that, but will swear to it on knowledge and belief—to his pupils, if he said a thing that was sufficient. So the X-faculty gave me to understand that it would be time enough to inform me what stock I was to invest in when I reached my brokers aforesaid. I hasten to say that I never in my life dabbled in stocks. I knew from bitter experience of my friends the disastrous results of monkeying with the stock market. I had once for some $200 or $300, tested a tip which an impoverished, de-

cayed gentleman whom I helped a bit, brought me, and I too his tip to see if a Wall Street banker could tell the truth. The tip was one that a Wall Street banker had given out to a gentleman, a man of good family on his clerical staff, that cotton seed oil was going up. This decayed gentleman was a relative of said clerk. The said clerk had told him under pledge of secrecy, under which pledge the banker had told the clerk, that it must not be given away. So nobody knew it but the clerk and the decayed gentleman who told me, in the hopes that I would act on it and give him some money on it." I said, "All right, I will risk $200.00 or $300.00 on it." Possibly it was $150.00 or $200.00. It was way back in 1892. To cut this story short it moved up a point and I made a hundred dollars or so on it. I gave it to the decayed gentleman. But the stock was awfully slow moving, as slow as poker when the cards don't run well. So I quit it. I say this to show that I was well aware of the hazard of the stock market. This was just before Christmas, three days before Christmas Eve, about the 21st of December, 1895, that I got this tip from the X-faculty with regard to the stock market. I got this train. The X-faculty was right. There was a train which got there somewhere around three o'clock in the morning. I got this train by driving very rapidly. I had a standard bred trotting stallion of extra good speed. I went to New York, landing at my broker's office before three o'clock. I said to my broker; I had no broker, but this was a broker, and a Columbia College man. I told him I wanted to keep this deal of mine quiet, because I knew it would give an entirely wrong idea of my business aims if it were known; not that I think there is anything wrong in it, but I think it is unbusiness-like unless you are on the inside. I saw this gentleman (a graduate of Columbia University)—again this comes in as interesting in what I said about the X-faculty clairvoyance in yesterday's deposition. I said there was always something obscure in their clairvoyant utterances, if not false; that the obscurity and falseness were oracular. By oracular I mean the ancient Greek oracles, for example, the

Oracles of Delphi, or the sayings of the prophets in the Scriptures. That is the reason I studied the Bible, to bring in citations as occasion arises, so I would understand what I was talking about, as many of the sayings—and more than one are frequently cited by men from the Scriptures—as many of the sayings are absolutely incomprehensible, some palpably false. I say false; they are meant to be so. I will show that I am correct by quoting from the New Testament. St. Paul says—when it comes to quoting from the Scriptures I follow the doctrine laid down by the Founder of Christianity, who said in effect that "The letter killeth, the spirit giveth life," (it is either "life" or "light"), and in that particular, to endorse the fact that when I say that I have made the Scriptures a study, I am not bluffing, and to remove that doubt from anyone who thinks I am exaggerating when I say I have been studying the Bible, I say that one of the peculiar things about the sayings of the Founder of law and the prophets, was that without a solitary exception, every one of His quotations were inaccurate. I hasten to say that I have proof that He always gives the spirit of the law and not the letter. If you attempt to parallel the quotations the said Founder cites, you will find that the citation is never "letter perfect" as they say on the stage; it is never absolutely accurate as regards words, but never inaccurate as regards spirit or sense of the quotation, and in fact the change in the quotation made by the Founder always enlightens the original quotation and gives it a new light or a new purity To resume. St. Paul says in effect, "I am the keeper of the oracles of Jesus Christ," in effect; it may not be word for word, I have not looked at it for years and years, and I don't know positively. Now the use of that word "oracle" by St. Paul in the above citation throws light on the use and meaning thereof in that phrase, of the whole sense of the phrase. It seems that the sayings of Jesus Christ were dark sayings. An oracle is a dark saying, an oracular saying. St. Paul does not say that "I am the keeper of the statements of Jesus Christ," or of the "parables" or of the "theories" of Jesus Christ, but of the

"oracles of Jesus Christ," which is a new, so far as I have heard, interpretation of the sayings of Jesus Christ. In other words they are understood by St. Paul as being oracular. All his says are oracular, because St. Paul did not limit. Once you get Jesus Christ saying oracular things, then you open a tremendous field in the interpretation thereof, and the interpretation thereof must be a thing scientifically and most carefully approached. Now the things which take the place of Jehovah on earth—(I am now speaking as a Christian and believer in the Bible and Scripture, and a communicant in the Episcopal Church—I am a regular old-time Christian believer, member of the Episcopal Church, baptized and confirmed therein, confirmed by a relative of Bishop Potter, his predecessor)—I am a regular Christian believer, believer in the 39 Articles of the Church of England, as I remember them; in other words, absolutely died in the wool, an orthodox, an old-time believer in religion, and proud of it. I want to get that down because I have been making daring experiments in the unknown portion of the field of psychology, and the fulminations of the Washington "Post" liar prove that it is necessary to make myself clear on this point. I now trust that the public knows where I am at as regards ghosts and seers and "flap-doodle.". I have made a study of Biblical criticism on entirely original lines, so far as I know, in this way: That I have been a reverent believer in God Almighty, Jesus Christ and the Holy Spirit—in other words the Holy Trinity—having all the necessary reverence to approach the subject in a non-flippant, non-superficial manner. I believe the scriptures, old and new, ancient and modern, are inspired. I always have with this reverent spirit two others, one, scientific spirit, which is absolute, atheistical almost, that does not believe anything that is not proved absolutely, scientifically. Between the two I have a philosophic spirit. Philosophy recognizes the possibility of a God and the necessity of Metaphysics in a philosophic scheme. Science does not recognize the necessity of a God, and practically denies the existence of a God, denies the needs of a First Cause and

contents itself with saying "it happened." Under the philosophical head I approached the study of the Scriptures as a lawyer. No profession is so acquainted with the Scriptures, outside of a theologian, as an old-time lawyer. No man draws on the Scriptures, ancient and modern, so frequently in his business as an old-time lawyer in his murder cases and others; therefore, the lawyer can believe in the existence of a God and reverently. Besides, no church from the Roman Catholic to the Salvation Army (you can't call that a church, but I want to go from one swing of the pendulum to the other); or Baptist or Congregationalists or Methodists, not one of these is without its legal adviser regarding its temporalities—the temporalities are in charge of a lawyer. Therefore a lawyer is a man well fitted for the study of the Scriptures in the way that I go about it. Furthermore, the Founder of Christianity was a lawyer. The law of the Jews was the law of Moses, in addition to the Talmud, which was the body of the civil and canonical laws of the Jews—that is the findings of the Chief Priests and Rabbis, like the judicial opinions on the law, decisions of judges on law, like the opinions of ecclesiastical courts, that when it says in effect, that Jesus Christ argued with the doctors in the temple, or rather in describing Jesus Christ as arguing with the doctors in the temple (words to that effect), they were astonished at His learning, He was a student in law. At the time He was a student in ecclesiastical law, for ecclesiastical law was the profession of the doctors of law, and the lawyers spoken of in the New Testament were lawyers of ecclesiastical law or Mosaic law. Therefore, when Jesus Christ astonished the doctors, they were doctors of law; they were lawyers, and when he astonished the doctors he astonished the lawyers with his legal knowledge. Then this idea of Jesus Christ being a lawyer is carried out in the saying in the New Testament "in which we have an advocate before the Father," or words to that effect; one who will plead the cause of the human race, and in that same connection also Jesus Christ is a lawyer. Jehovah is the Judge, and as Jesus Christ is the advo-

cate of the human race before the Great White Throne, so Jehovah is the Judge of the human race at the same place, and therefore we have the foundation of our Christian religion based on law and law books and legal opinions handed down by the Great Judge Jehovah and later elucidated by his Commonwealth's Attorney, Moses, and later by His son, Jesus Christ. Therefore a lawyer is above all men fitted thus far in my statement to study intelligently, and by that I mean to get the meaning that Christ meant when He delivered His said oracles. Now, how does a lawyer go to work to get at the meaning of a legal decision? Does he guess at it? Does he interject into it his own personality? Does he throw into it remarks such as that it is hyperbolical, and that it is metaphorical, or that "the judge never could have meant that?" Does he throw into it any such things as that? No, he does not. When a lawyer interprets the decision of a judge he is bound by a set of rules as rigid as any rules known to the law, and those are the laws known as "The Laws of Interpretation," or words to that effect. Now briefly these laws of interpretation do not admit of any interjection into the text of any foreign matter. That is first. Second: It does not admit of any far-fetched meaning being applied to any word of the text. The legal law of interpretation demands that the meaning of the words in the text shall be interpreted according to the meaning of those words as used in the "market place," using the words "market place" in the general sense of being the language of the men in the street, of public use, not the technical use of the words. Now that is enough of the law of interpretation to show how vastly different that is from the attitude of the average Divine, or any divine who attempts to interpret the oracles of Jesus Christ, or any statement in the Bible. What divine will be withheld by the laws of legal interpretation from interjecting into any text the remark that it is metaphorical, or "Our Saviour could not have meant that," because the divine did not want Him to mean that. Or lastly, if it is a word which gives a doubtful meaning, how often have we heard the divine say, "Oh, the

word can mean so and so," which will be found marked 5 or 6 down in the scale of philological derivation of that word in the dictionary. In other words, a very obscure and infrequent use of it. The divine will not hesitate from the pulpit to interject that obscure and palpably false interjection into his sermon, for the reason that he wishes to back up some notion or whim which he may have. Far different from a lawyer interpreting a legal decision, particularly when these are not legal decisions only. The Commandments were legal decisions, but the sayings of Jesus Christ were not legal decisions, but oracles, with the exception of the sayings of His which were commandments, and the laws handed down, the Mosaic laws and the Ten Commandments. That Jesus Christ outside of the laws He laid down, spoke in oracles, according to St. Paul. Therefore, how much different to get at the meaning of Jesus Christ in any statement of His, not a direct command, it being oracular. The definition in Stormonth's Standard Dictionary of an oracle is as follows:

> "Oracle.—1. Class Antiq. The seat of the worship of some special divinity, where prophecies were given out by the priests in answer to the inquiries of the votaries, usually in regard to the issue of some event or to some proposed course of action. Among the most revered were the Delphic Oracles of Apollo, at Delphi in Greece, the Oracles of Miletus and Argos, that of Zeus at Dodona, and that of Jupiter Ammon in the Libyan desert. 2. The oracular utterance or prophecy thus given out: commonly in the form of a brief saying, often figurative, difficult of interpretation or capable of more than one interpretation."

Therefore, an oracle is always an obscure saying, or dark saying, as I have said. In my investigation of the Old Testament and New, I exercised my skeptical mind, philosophical spirit, or legal spirit, and my Christian spirit, and before a conclusion was reached all three spirits. (My own spirits,

not ghosts). I argued to myself from the skeptical view, the philosophic view, and from the view of a communicant of the Episcopal Church, from the point of view of a believer in the 39 Articles. I therefore got a rather broad—that is to say, not a narrow-minded—interpretation when all these different spirits of the investigation were satisfied, or out-voted two to one, and that is enough for that at this point.

On reaching this broker's office I took up an envelope and wrote on the back. I made a mental question—I did not have to write the question out—and the answer would be written to me. If the answer was "Yes" or "No," it would be written by automatic writing. And when I asked what stock was to be bought it wrote "Manhattan Preferred." Now, here is where the oracular, the element of falseness entered. I turned to my broker and said, "I will take Manhattan Preferred," and he said, "There is no such stock." He said, "There is Manhattan," not "Manhattan Preferred." I then consulted the X-faculty again; that is, it wrote on the back of the envelope, "Go ahead." I did this without the broker knowing anything about it. I made the excuse of turning away, so he could not see me, by saying, "I wish to look at my notes," or something like that. To cut the story short, I invested $600 or $700 on a 3-point margin in Manhattan, and although the broker wanted me to give him more of a margin, because he said, "that is a very rapidly moving stock once it gets started, one of the most dangerous in the market." It was chosen by my X-faculty. I don't remember now whether I went "short" or "long," but the important point of it was, it hit the market right. The next day I telephoned down from the Hotel Kensington, after consulting my X-faculty, and it hit right again. As I say, I don't remember whether I went "long" or "short," but it can be found out by referring to the obituary department of my New York newspaper where the stock quotations are on record, whether the market was "bullish" or "bearish" then. At all events, at the end of three days I had made $600, making a new bet every day, and I won out. That answers that question of the Washington

"Post" liar as to why I don't use that power for making money—does not say so, but inferentially inquires why I don't use my knowledge of alleged prognostication to operate on the market and clean up a million in cotton in a month—I say it has been done and I have won on it. That money was paid by my broker to Stanford White, so he told me later. The stock was left up until March, 1897, not taken down; the money was left on margin at that time because the X-faculty would not allow it to be taken down and I yielded to the suggestion of the X-faculty because it would not work unless I did. The X-faculty has promised to renew this business on the stock exchange at some future date with a limited amount of surplus income, and I have no objection whatever to having it renewed. The first loss, down and out it goes. I have no prejudice against working on the stock exchange, provided you can win. That winds that up.

(By Counsel for Defendant: All narrative, hearsay and allusion to documents not filed are excepted to as not relevant to the issue.)

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Witness resumes: This phrase indicates that this letter was written by graphic automatism, or automatic writing. I don't want that phrase to go in without explanation; it is ambiguous on its face—this phrase—without explanation. When I found, as aforesaid, that I could not get anybody to put my brief into legal verbiage, legal phraseology, I then determined to do what I had done in "Bloomingdale," July 3d, 1897, the date of my letter to Captain Micajah Woods—that letter is five or six thousand words long, more or less. That letter, strange as it will sound to the average mind, is the work of pure automatic writing, is strictly graphic automatism. That letter was written by my sub-consciousness, by my subliminal self, by my X-faculty, as one chooses to call it. I could not have written that letter; it was over my head, to use a well-

known phrase; it was beyond my literary ability. That letter has received high praise. The critique on "Four Years Behind the Bars" in evidence, has mentioned that letter specifically as a masterpiece, and every lawyer who has seen it and has passed opinion on it, has praised it. I had first attempted in "Bloomingdale" to write a letter myself, without calling on my X-faculty's aid, because I was put out with my X-faculty. My X-faculty had shown hypothetically (as a hypothesis) that it might possess clairvoyant powers. It had tipped me off on Wall Street where I made $600 in three days. It had also said to me through what Professor William James calls in his opinion on file in the Charlottesville proceedings on November 6th, 1901, "Internal" (words to this effect)—internal conversations with his X-faculty. The X-faculty had communicated with me at "The Merry Mills" before going away with Stanford White and the doctor that came with him—had said in effect, "You will be in Hell for three years and some days." I had inferred from this that it was a possibly clairvoyant utterance concerning my financial affairs. My financial affairs were very promising, but very slow—very slow by reason of their bulk. It required the growth of a manufacturing city to make them culminate. They were slow and I did not expect them to be anything but slow. I thought this Hell would be a Hell of waiting. John L. Sullivan and I both dislike to wait, as has been said in this deposition, hate to wait for things. (I flag the Docs.) I mention John L. Sullivan because I have mentioned him before in connection with his waiting. I thought not much of this clairvoyant utterance of "three years and some days," setting it down to business care, which is the legitimate consequence of going into business, it accompanies business, and when Stanford White begged me to go to New York "for a plunge in the Metropolitan whirl," after he did this I went up stairs and communicated with my X-Faculty to this effect—I will say by way of explanation of how this internal communication took place, I don't have to utter the words I wish to speak; it is only necessary for me to think them. I

get a reply either by vocal automatism, spoken words which I can hear, or by unspoken words which present themselves on the, so to speak, (I flag the Dom) retina of the mind. I went to my bed-room and at once communicated with my X-Faculty to the following effect: "White wants me to go to New York; I suppose you are opposed to that, as you have told me that White was my greatest enemy." The X-Faculty had communicated to me, if I remember correctly, weeks before White's arrival and *apropos des bottes*, a French phrase which means "apropos of the boots," in other words, apropos of nothing, but which I mean, had given no reason for it, but had simply said "Stanford White is one of your worst enemies." I was very much surprised by the reply of the X-Faculty to my statement above quoted, that "White wants me to go to New York; I suppose you are opposed to that, as you have told me that White was my worst enemy." I was surprised at the reply of the X-Faculty to that statement. The reply was in effect, "Go." I then said in effect, "But you have said that White was one of my worst enemies"; to which the X-Faculty replied, in effect, "Nevertheless, go." I would like to say here that I am in no wise under the control of my X-Faculty; that I only experiment with it as a Psychologist, and for the purpose of solving the unknown problem of the human mind, and have done nothing at the suggestion of the X-Faculty without cause. I was willing to take the word of the said X-Faculty and go to New York, because I could find something to do there for a few days relative to my business affairs, although I had put them in such shape before coming away for a rest, as before alluded to, in my comments on the letter written by Stanford White to the Princess Troubetskoy—I put my affairs in such shape that there was no possible necessity for my presence in New York—and also because I am of a somewhat adventurous nature. I like adventure. My travels all over this country in cow-boy days, etc., were for that object among others. I like adventure and I always had perfect confidence that I could get out of any hole that any enemy might put me into, and the

facts have borne me out. I got out of "Bloomingdale," which nobody ever got out of before. Other people have escaped from "Bloomingdale" temporarily, but they have been traced, caught and brought back. Mrs. John J. Chapman gave as a reason aforesaid, of my being placed in "Bloomingdale"—which gives a life stigma to anybody put there—because nobody had ever escaped from there. I decided to go to New York and risk it. I was so much put out with the X-Faculty in having endorsed my going to New York, after having told me that Stanford White was one of my worst enemies—which going to New York led to my being laid by the heels in "Bloomingdale"—I was so much put out by this that I did not want to ask the X-Faculty to do any writing for me. I for the sake of consistency and scientific correctness, wished to put the X-Faculty on record as to whether or not it approved of my incarceration in "Bloomingdale." I have been working for fifteen years, come December next, trying to catch the X-Faculty in an inconsistency, and I have signally failed. It has written me thousands of words and answered thousands of questions, but never have I caught it in an inconsistency. When I was put in "Bloomingdale" without delay, I asked, in effect, "What have you to say to this?" and it replied without hesitation, in effect, "This meets my approval; it is as it should be; not that you deserve to be put here, but you are here for a purpose." It did not at that time state what that purpose was, but it made it perfectly clear to me that there was no reason why I need to be locked up in "Bloomingdale"; that the purpose was ulterior, whatever it was; it had nothing whatever to do with me, the purpose was separate and distinct from me personally. I was disgusted with this, but I asked one further question, in effect, "When am I going to get out of here?" and the X-Faculty replied, and this in writing, "When Easter comes," gave no date, simply said that. I tried to write a letter to a certain party and failed—by which I mean that I did not have the literary ability, and knew I did not. I began the letter with great diffidence—to write a letter which would have,

without doubt, compelling effect upon its recipient, instead of an unpleasant effect, a boring effect upon its recipient. I wrote pages and pages to this third party, and every page convinced me of the futility of my task, through the curse which I have carried through life of anti-literary ability, or lack of ability; in other words I did not have a scintilla of literary ability. I had not what is known as literary touch, or literary charm, or any of the various phrases to indicate and differentiate a man with a literary turn from a longshoreman. I was a longshoreman as regards handling a pen, except that I had a larger command of language than the ordinary longshoreman, but that was because I had a natural oratorical bent. That is such an astounding statement, that is to say I consider it such, that I don't want to leave it unsupported for a fraction of a second, and as chief counsel, in spite of the objection which will follow from the learned counsel of the other side, must ask for an exhibit not yet put in, but on the spot, to support this statement that I have a natural talent towards oratory. This deposition is something like war (I flag the Docs.—I am using metaphor)—this deposition is very much like a battle in this particular, that I map out every day, before going on the stand, what I am going to touch on, so far as I can, but there is a tide in depositions as there is a tide of battle, and no one can foresee the turn of that tide. I could not foresee that I would need to make this statement concerning oratory. I had to do it to explain how and why I had a larger vocabulary than a longshoreman and yet had no more literary ability than a longshoreman. I must ask Mr. Dunn to hand me the copy of Shakespeare to put in evidence to support this statement.

(By Counsel for Defendant: All of the foregoing answer is excepted to as hearsay, irrelevant and argumentative.)

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By Witness: To resume. After various attempts at this letter I gave it up in disgust. It was not that I could not

express myself clearly on paper; I could do that, and always could. There was nothing obfuscating about my ideas; they were perfectly clear to my mind, and I have never found them other than clear to the mind of any intelligent hearer, but I could not keep down to the subject matter in hand sufficiently close and without repitition, without redundancy. I knew what I wrote was redundant. I did not wish to have a letter that was redundant. I did not wish to have a letter that was redundant to go out from the madhouse cell. There was nothing in it that was incoherent, but its style was not compelling enough, as aforesaid, by which I mean, as above described, free from irritating matter and redundancy, irritating to the reader though not to the hearer necessarily. As I explained to Dr. Flint, as is written in "Four Years Behind the Bars," concerning my conversation with Dr. Flint and Dr. Macdonald (which "Four Years Behind the Bars" is in evidence), that, in effect, I was intentionally redundant when speaking, in order to "rub in" my point, but not in writing. At that time I was using the X-Faculty for writing, exclusively, and there was nothing redundant about the X-Faculty's style. There was nothing redundant about the letter to Captain Woods, of July 3d, 1897, although it contained between five and six thousand words; that is to say, nobody has ever criticized it as being redundant, and they have praised it as being a masterpiece. I have no shame about speaking of it as said to have been a masterpiece—I did not consciously write it. To all intents and purposes, I dreamt it. As a Psychologist I say that the X-Faculty is the dream faculty, it is the faculty which draws our dreams (I flag the Docs.) for us at night, and when I say X anything good that my X-Faculty does, it is as though I said on coming to the breakfast table, "I had a masterpiece of a dream last night; it was coherent and interesting, as dreams go; it was a masterpiece. After giving up the idea of writing a letter which would beyond doubt win the confidence of the reader, I was then in position to get aid from any source without exception that I could. The X-Faculty offered, by inter-

nal communication with me, to write me a letter. I at once accepted the offer with thanks. I must say here as a Psychologist that in all dealings with the sub-consciousness it is a known fact to all Psychologists that this dream faculty, this X-Faculty, must be treated with respect, or it will not operate. People who use the planchette, that toy before alluded to, know that if they blackguard planchette, if they call it names, it will not work. They also know that if the surroundings are not such as planchette wishes it will not work (I flag the Docs)—when I mention what planchette wishes, I mean the sub-consciousness of one or more persons present, which operates planchette—there is nothing supernatural about that, but there is something very mysterious about it, using mysterious as a variant for unknown. Professor James says in his said opinion on me, that this question of the X-Faculty is very little known at present; the study of it is in its infancy, words to that effect. That is what I mean by mysterious, it is not known. If there is a person who is an absolutely scoffing doubter, and when operating planchette somebody cheats, and says that there is no sub-consciousness about it, or words to that effect—that somebody is writing and cheating and pushing the toy under the table, that under these circumstances planchette will not operate. As regards the X-Faculty, the same is true strictly. I cannot *make* the X-Faculty operate to save my life. I have tried it on various occasions, when third parties but of scientific interest would ask me to give an example of graphic automatism; friends of mine in society, for instance, have time and again asked me to do it. I did not propose it, I have always waited until I was asked, and I have frequently acquiesced, not always, but quite frequently, and frequently the X-Faculty has declined to operate, on the ground that there was one or more persons present, before whom it would not operate, because allegedly these people were absolutely set in their opinions and beyond the pale of argument, and beyond conviction, and the X-Faculty does not care to operate before gentry of that kidney. Furthermore, I must treat the X-Faculty with some polite-

BLURRED

ness when it has acquiesced in a request of mine to write; I must thank it. I make it a rule to write "Thank you" when using graphic automatism; if I don't I won't get a reply. There is nothing superstitious in this on my part. I do it as a scientist, as James says it is very little known, it is in its infancy—this branch of Psychology. I don't know why the X-Faculty wants this, but I know it does, and therefore I do it, as a scientist, in order to get the retort. I go into this specifically because there are writings put in here—law writings—which have dialogues between me and the X-Faculty regarding law points and other points, and at the end of a dialogue, or other remark, I would put "Thank you" because I wanted to have the remarks continued in the future. And if I did not explain that, it would look peculiar to see "Thank you" written out by a lawyer while composing a brief, which was afterwards turned into legal work, which received high praise from legal experts, namely, the book "Chaloner on Lunacy." That book was written entirely by the X-Faculty. The literary style is that of the X-Faculty—it is the style of the letter to Captain Micajah Woods, of July 28, 1897. The matter is mine, I had made it mine by learning it, absorbing it, and before writing the brief I went to a law school, figuratively speaking, with Blackstone, by reading page after page of his wonderful Commentaries on the common law. All this is germane to this matter, and there will be pages and pages of manuscript in my handwriting, in blue pencil. I say my handwriting with reservation; it is not my handwriting, it is the writing of the X-Faculty; that is, of graphic automatism; it is much better than my handwriting. I will now produce specimens of handwriting.

(By Counsel for Defendant: We except to the above question and answer for the reasons heretofore assigned.)

By Counsel for Plaintiff: Q. Mr. Chaloner, I hand you these papers and ask you if they are the specimens referred to?

COPY

A. They are.

Q. Please describe them.

A. One of these papers is written on the back "Specimen handwriting at "Bloo'dale" (contraction for "Bloomingdale"); the other "Specimen of sustained X-F. writing in ink"—"X-F" stands for X-Faculty, of course. The first specimen of handwriting in "Bloo'dale" is my own handwriting, out of a trance, a writing trance—what I term a writing trance is strictly a writing trance-like-state, is not a trance, but a trance-like-state—this is dated, the first one, 4-5-98, and is headed "Immanuel Kant" the great German philosopher "(1724-1804)." The second specimen of writing is a copy of the Commitment papers in my handwriting, when in a writing trance. I was short of copies of the Commitment papers in Lynchburg, and made this copy—a tremendous piece of work. It bears on the back in blue pencil (I will say by way of explanation, that I used the blue pencil always in preference to black, because it is more visible to the eye; I have found that out from the amount of writing that I have done, that blue is far more legible than black) —the following words appear on the back, "Brought with me from my Lynchburg, Va., safe deposit box, in Peoples National Bank of said city, and said safe given up, Ernle G. Money, Friday, October 4th, 1907. Staunton, Va., Valley National Bank, S. D. B. (which stands for safe deposit box) by E. G. Money" and then "J. A. C." I always put my initials after everything I write which is private, in order that I may know, and anybody who sees it may know who wrote it, to avoid ambiguity. It also makes it an exhibit, if at any time I should need to exhibit anything I write. That is a general rule that I have observed for ten years at least. This "Immanuel Kant" is taken from the Standard Dictionary and gives his philosophical system. I am a great admirer of Kant ,and have been so ever since I was introduced to him in studying philosophy at Columbia University. I now quote:

"Immanuel Kant (1724-1804) 4-5-98.

"Kantianism, the system of philosophy devised by Kant: opposed to dogmatism, skepticism, associationalism, perceptionalism, etc.

Kant called his philosophy the critical philosophy, as being founded on the critical analysis of the facts of consciousness. According to him, the Sensibility (similickkeit) originates the matter of our perceptions and furnishes Appearances (anschauungen), the Reason (vernuunft) furnishes the forms of conception and of assertion, and the Judgment (utheilskraft) brings these two into relationship, and also modifies and combines Judgments according to Rational Forms or Categories. Kantianism originated in opposition to the system of Hume and the sensationalists, and teaches that all thought and knowledge come from within. But it gives no reason for belief in objects other than and separate from the workings of mind itself; so that, though the external (Ding an sich) (or) *Thing in itself*, is not denied, it is in no way provided for.

Subsequent philosophers, as Fichte, Schelling, and Hegel, who based their system on that of Kant, threw away this object, and so the great systems of German Idealism were introduced." From Standard Dictionary. (Standard Dictionary) "Idealism. 4-8-98.

"Idealism 1. Philos. The doctrine that in external perceptions the objects immediately known are ideas and ideas only; the system that explains the phenomenal universe by referring it to idea in one or other of its forms. It takes various forms as determined by the view of what that idea is.

According to realism there are three positively distinct things implied and involved in any act of vision, as in seeing a book: a book, the image or apprehension of that book, and an apprehending mind, ego, or self. Idealism has various ways of dealing with these three facts.

(1) Subjective Idealism (Fichte) teaches that the book and the image are one thing, and that all that is perceived is simply a modification of the mind."

"(Compare Berkeleian Idealism J. A. C.)"

Easter Sunday, P. M., 4-10-98.

"Standing on that shore; gazing from that strand
I saw, A ship, a Man of War, approach the land.

J. A. C.

Note.—By "Shore" is meant "The Nights Plutonian shore."

P. M., 4-10-98.

"Title of the above couplet, "Marooned."

J. A. C. 4-10-98, P. M."

At the foot of this extract from the Standard Dictionary is the rhymed couplet I put in. I had no idea that this would ever be put in evidence, written way back in 1898, 18 years ago, but it comes in pat, it being the only specimen that I have of my handwriting absolutely unassisted by the X-Faculty. This was written in 1898 and I would like the jury to compare this note with the chirography of the said letter to Captain Micajah Woods, written the year previous, in 1897, and see the superiority of this chirography, which was largely aided by the X-Faculty. The X-Faculty did not do that by automatic writing, as it did this other specimen of handwriting shown now, namely, the copying of the Commitment papers. It did not do the first of the letter to Captain Micajah Woods as it did this. It gave me to understand that it helped me with the chirography of the Micajah Woods letter. I know that it did not help me in the chirography of this note on Kant and Philosophy taken from the Standard Dictionary, and I also know that it wrote the entire copy of the Commitment papers. I did not form one letter in it; it was formed by my hand in a writing trance, above described. This couplet called "Marooned" might very well be a clairvoyant utterance, indicative of the arrival of a book of son-

nets, which might by poetical metaphor be termed a "Ship of War," a "Man of War," my sonnets being aggressive. I had never written a sonnet when I wrote this couplet, and, moreover, had no idea I ever would or could write a sonnet, but within four months of the time this couplet was written, namely, April 10, 1898—I wrote my first sonnet in 1898, August, and wrote fifteen sonnets, as I remember it, between that time and Christmas, 1898,—that is, as I remember it, I may not have written so many in so short a time. The handwriting in copying the philosophy is labored, rough, the pressure is heavy, that is evident from the writing. The letters are angular more than round; there is no evidence of ease. In the other specimen, the copying of the Commitment papers, there is nothing but ease from start to finish, and the letters are round, the writing is distinctly by curves instead of angles, and the pressure is light, not heavy, and at the same time my mind was entirely taken up with what I was doing. I was copying a legal paper and my mind was not in any way given to how my writing looked, so long as it was clear and legible. On the other hand the writing is far from ugly, and it is of a level sustained quality from the first page to the last, estimated in the neighborhood of twenty pages, more or less, of legal cap, and the bottom of the page is as well written as the top, and the last of every word is as carefully written as the first. There is no "terminal fizzle," an expert term among experts in handwriting, which means that the last letters of a word are run together and only partially formed, are only partially indicated. This is sustained, clear, easy writing.

(By Counsel for Defendant: We make the same exception to the question and answer as above noted.)

By Counsel for Plaintiff: I now file the specimens of handwriting in evidence, and ask that the same be marked for identification and made a part of the evidence in this case. Said exhibits are marked "Plaintiff's Exhibits 67 and 68."

(By Counsel for Defendant: We object to the filing of the said exhibits and all these papers as irrelevant and immaterial.)

By Witness: The X-Faculty suggested that I take the largest sheet of paper I could get at "Bloomingdale" and take a pencil and it would show me how to operate graphic automatism. I took a pencil and placed it on a table before me, and with my arm stretched to its fullest extent, holding the pencil naturally between the thumb and forefinger and middle finger, I felt my hand move in a rotary motion, making circles, large zeros, say an inch in diameter. The hand would move without any volition on my part; the X-Faculty attended to that, presumably by operating the nerve center in my brains, controlling the action of the right arm and fingers, aforesaid. After I had done several pages of zeros, the X-Faculty began to form large capital letters, from A to Z straight through, about an inch high. It then began to write short words, like "cat," "dog," etc. This letter to Captain Micajah Woods was written in this way, and I will offer that in evidence. It was written in blue pencil originally, and copied by me in ink, as aforesaid. The original was entirely graphic automatism, in blue pencil. I have not got that with me. It is at "The Merry Mills." It was left by an oversight when I brought up the scores of exhibits that I did—that happened to be left, and I shall get it and put it in evidence before the close of this deposition. This begins with large letters, beautifully formed—if I do say so—I could not form them unless I was in a writing trance. They are what are known as uncial and were a form of ancient mediaeval manuscript—the monks used to write in uncial, for clearness among other reasons. It is where all the letters of every word are capital letters, but joined. I have not seen the word since I was in "Bloomingdale," but I believe I am right in my description of it. At all events that is the way the letter to Micajah Woods begins and keeps up several pages until my hand was thoroughly accustomed to this current,

so-to-speak, which manipulated (again so-to-speak) my writing hand. I use "current" as above referred to; it was not an electric current, or anything of that sort, but simply a motion of my hand originated by the X-Faculty or subconsciousness, by operating the nerve center in my brain which controlled it. I was practiced in this way for several pages in the Micajah Woods' letter, so as not to offer any obstruction to the X-Faculty when forming the word, as there is a very strong impulse naturally to "butt in" and finish a word when it has been begun, by one's sub-consciousness. After the first three pages or so, the X-Faculty diminished the size of the letters to ordinary letters used in correspondence and continued that letter to the end. The X-Faculty began this letter to Captain Woods and finished it. It then said—wrote me or communicated by internal conversation with me—that it would write me some short stories, compose short stories, romances, to while away the time, until a man should come to "Bloomingdale" who would take my letter, or rather the letter it had written for me, to Captain Micajah Woods. That this man would come; that I was not to make any effort to get it posted, for the aforesaid reason that none of the keepers would post it. I had tried that months before, and none of them would post anything for me, and it prognosticated that a man would come. He did come, in October; the man was H. V. N. Philip. The letter was written in June, so that prognostication came true. It wrote me this. I said, or wrote, "Will you write me some stories like de Maupassant, like '*Boule de suif*,'" and the X-Faculty said "Yes," it would, or wrote that it would, and wrote this: "I will write you storiess that will glow like gems." The X-Faculty thereupon set to work and wrote me about one hundred pages of manuscript, as I remember it, of large tablet, two-thirds the size of legal cap furnished by "Bloomingdale," of a romance which I say, without hesitation, is as interesting as "The Three Musketeers," and the style is as simple as the "Vicar of Wakefield." There is no conceit in this. I did not write it.

(By Counsel for Defendant: We make the same exception as above noted.)

VISIT OF ELIZABETH CHANLER CHAPMAN TO PLAINTIFF IN "BLOOMINGDALE," 206-207, 370 AND 372.

* * * About the same time my said sister paid me a visit. She had been abroad when I was arrested and had only shortly returned. I might add that she was my favorite sister and the only member of my family I had mentioned in my aforesaid will. Lastly, she was the sister whom I mentioned in my said letter to Captain Woods, as having lunched with me on my aforesaid trip to New York in 1896, and who had made the remark about the family's views on my absence from the said wedding of another sister in October, 1896—that said family thought me crazy. Said favorite sister entered my cell with a jaunty air and a look as far as possible from resembling grief or distress or even regret at finding her brother in such a place and under such circumstances. I took in the situation from her air and manner and pointing to the bars on the windows of my cell said: "Those are nice things to have on the windows of my room." "O," she replied, "they are put up there to keep you from running away." This remark brought vividly to my mind the reply of the wolf to Red Riding Hood regarding the size of the former's teeth and incidentally settled my sister's case in my mind. During the ensuing conversation, which was entirely amicable during its entire length, I remarked that if they were going to put me in a madhouse they might, to spare my feelings, have chosen one less notorious than "Bloomingdale" which puts a life stigma on anyone sent there. To which my sister replied, "'Bloomingdale' had been selected for the reason that no one had ever escaped from it successfully." In closing I regretfully but clearly proved on the evidence in the commitment papers, the perjury of her two brothers. To this she offered no defence. I told her at parting that she had shown that she was with my said brothers and that I was glad of it, because I did not need her sympathy whereas they

would, by the time I got through with them, by the time that I had shown them up; and that the only request that I would make of her was not to call on me any more. To this she readily agreed and I have not seen her from that day to this.

* * * * * * * * *

Now, I will simply say that I used every effort that a man and a lawyer could to get out of that hell and madhouse cell. I failed. My last hope was my former sister (I use "former sister" to indicate that there is no possibility, or hope, of reconciliation; of course, there is the same degree of consanguinity), Mrs. John Jay Chapman, who visited me and acted in a rather unsisterly manner. She was my last hope; she was my favorite sister; she understood my temperament.

* * * * * * * * *

When I found my former sister, Mrs. John Jay Chapman, had gone back on me I was cut to the heart. I had been in "Bloomingdale" from the 13th of March until the 15th of June, or thereabouts, when Mrs. John Jay Chapman, who had been in India for the winter, visited me, and with her disappeared my last hope.

EXPLANATION OF TERM, "I FLAG THE DOCS," 370-372.

* * * I now use this expression, instead of saying I don't wish to be perjured about by Dr. Moses Ananias Starr, Carlos F. MacDonald or Austin Flint, Sr. I shall simply in future in this deposition use the phrase, "I flag the Docs"; that will be understood to mean that no medical technicalities can be injected into my language, no "ideas of grandeur," no expansive ideas characteristic of paranoia, the other term for which is: Systematized delusional insanity and the right word for which is monomania; but the doctors, because they are so

crooked in New York, the lunacy doctors, knowing that the public has gotten on to the meaning of the word, "monomania"—having been educated up to knowing that the word, "monomania," means a person that is crazy on one subject and is harmless and ought to be at liberty, and these doctors, instead of using the word, "monomania," use the word, "paranoia," from two Greek words, "para," meaning "beside," "out of" "nous" the mind; that is, "out of his mind," and with that word they obfuscate all who are not Greek scholars, or familiar with the dictionary definition of paranoia. Men don't know what paranoia is and fear it (that is animal instinct, to fear what they don't know—horses shy at what they never saw before and men fear what they don't understand and are obfuscated by strange terms). They know what monomania is and they understand it, and if a man is accused of monomania he could not be run in because his friends know all about it, but the doctors call him a "paranoiac" and they don't know what paranoia is and they are up a tree. So I shall say, "I flag the Docs" to prevent being accused of having grandiose ideas—so as to save time.

DEPOSITION 1911-12—Continued.

VOLUME III

United States Circuit Court for the Southern District of New York.

JOHN ARMSTRONG CHALONER, Plaintiff,

against

THOMAS T. SHERMAN, Defendant.

Deposition of John Armstrong Chaloner Before L. D. Booth, Commissioner, From Pages 594 to 1119, inclusive.

The deposition was resumed at 3:30 P. M., Monday, November 27, 1911.

PRESENT:

The Plaintiff in person, and W. Gilmer Dunn, Counsel for Plaintiff,

and

R. T. W. Duke and Moon & Fife, Counsel for Defendant.

APPOINTMENT OF "COMMITTEE" FOR PLAINTIFF, 777-781.

By Counsel for Plaintiff: Mr. Chaloner, the record to which you refer—I understand that to be the deposition of Mr. Winthrop Astor Chanler.

A. That is exactly right, sir.

(By Counsel for Defendant: The same objection.)

By Counsel for Plaintiff: Mr. Chaloner, your brother testified on page 65 that Stanford White wanted to have a committee appointed of you—what have you to say in relation to that statement?

(By Counsel for Defendant: Objected to as leading and irrelevant.)

A. When it came to the question of raising money for building the present ten-story office building on 298 Broadway,—raising the difference between my equity aforesaid and what was necessary to complete the building, the trust company which had agreed to loan a considerable sum, the sum of $50,000, or $75,000, on 298 Broadway, discovered that I was in "Bloomingdale" after it had agreed to do this, and White came to me and said that he could not get the money as well as could Prescott Hall Butler, who was a lawyer and could attend to all purely business affairs of that sort, legal matters, better than he could, and also that it would be advisable for me to have him appointed my committee for this specific purpose. I have refreshed my memory regarding these circumstances by accidentally running across in my archives in this case, by which I mean the pigeon holes in my safe at "The Merry Mills"—a piece of paper which I had not seen for twelve or thirteen years, which bore on it a memorandum which I had made in "Bloomingdale" concerning Stanford White and the committee—that is why I am able to speak with a freshened memory. He gave me to understand —all that I am saying now is not on the paper that I am referring to, it is all from my memory—he gave me to understand that this committee was for the specific purpose of raising this loan. I must say that in 1899 I was a very unlearned lawyer, for the reason that I had never practiced law actively, and although being a member of a law firm, my business was to get hold of corporations who would employ the firm as

counsel, not to take any part in the active conduct of cases. I was an unlearned lawyer, totally ignorant of practice. I ceased to be an unlearned lawyer when I was forced to brief the case of *Chaloner* v. *Sherman*,—against my will, I had to do do this. I practically went to law school again at the feet of Blackstone and the legal decisions concerning lunacy in the forty-eight States and territories of the United States. This two years' study—rather eighteen months' study, with six months' previous preparation, is the length of time which a college-bred man requires to become a lawyer in New York State. It is three years for a man who has not been to college to be admitted to the bar, and two years for the college graduate—was when I was admitted to the bar. I have, therefore, put in two years' very careful legal study and have wiped out the just charge of lack of knowledge of law, which could be laid at my door up to the time I wrote the brief in *Chaloner* v. *Sherman*. For this reason, for this ignorance of law—on account of this ignorance, I actually did not know what the committee of an alleged lunatic amounted to. I did not know how it was come at. I did not know how he was appointed. *I had no more idea than the man in the moon that the appointment of a committee of an alleged lunatic was the final act in the tragedy of lunacy, the final legal act; that the first act in the drama is commitment, and the second and final act is the appointment of a committee for the alleged lunatic's person and estate on the ground of incompetency—through lunacy—I sadly say, for life, owing to the wicked laws in fifty per cent. of the States of this Union, nearly. I was as ignorant as a babe unborn, for the reasons already given, of the deadly nature of the committee of the person and estate of an alleged lunatic.* I would no more have agreed to the appointment of a committee than I would have cut my throat had I known what a committee was, and White skillfully hid the results of the appointment of a committee, "played up," in newspaper parlance, the absolute necessity of my getting a committee appointed for the purpose of raising the money necessary to rebuild 298 Broadway—otherwise I

could not borrow the builders' loan. He flaunted that before my eyes, and it did not require more than one flaunting, I being well aware of the necessity for rebuilding 298 Broadway if I ever intended to handle my property as it should be handled. So that is how I did not take in what it meant, this appointment of a committee, but, although I was an unlearned lawyer, I was still a lawyer, and as the 1899 proceedings shows by the mouth of Dr. S. B. Lyon, Medical Superintendent of "Bloomingdale," I used lawyer-like caution in not allowing myself to take part in a proceeding of which I did not thoroughly understand the nature by allowing a third party to represent me. Dr. Lyon truthfully says—words to this effect, that I asked him to tell the sheriff's jury that I was physically unable to come down to the trial in New York, twenty miles away, I being confined to my bed with a nervous affection of my spine at that time, and having been so for three weeks, on the evidence of Dr. Lyon. I had Dr. Lyon carry that message. Dr. Lyon chivalrously and honestly stated that I said that I did not wish Dr. Lyon to represent me before the sheriff's jury. Ignorant lawyer as I was, I still belonged to that noble army and showed a lawyer's caution, helpless as I was, in not allowing myself to take part in a proceeding which I was not thoroughly cognizant of, by being represented by a third party.

(By Counsel for Defendant: We object to this because it is hearsay and purports to give matters of law, and the conclusions and opinions of the witness, and because it is highly irrelevant to the issue.)

* * * * * * * * *

PLAINTIFF'S DIRT, 594-595.

By John Armstrong Chaloner: I make a motion, as chief counsel in this case, that this case be continued until 3:00 o'clock to-morrow, for the reason that I am not able to go on with it; I am physically able, but I have been so wrestling with myself for the last four or five days that I am mentally

fatigued. I find that I have got to go on bread and water diet. I have found that I had to eliminate the few things which stand between bread and water and myself as a diet. In the past week I have had to do that—even lettuce, salad and apples and cheese. I was seen at the last deposition here taken in the case of *Chaloner* v. *The New York Evening Post*, to eat cheese while on the stand; the hour being convenient, and wishing to save time, I ate something while on the stand—bread and cheese. I found inside of a week that that gave me gout and I had to cut it out, and I am now reduced to bread and water and that is such a bore and such a fearful mental conflict at self-repression and self-denial—it being the punitive penal diet in penitentiaries all over the world since the beginning of time. I am so disgusted with life that the pleasure of living is practically knocked in the head for me, and if anybody thinks this is an exaggerated statement, let him or her try it. After four or five days of bread and water I am depressed and miserable, but never in such health in my life; everybody has remarked on my good complexion and vigorous appearance. The struggle with myself not to yield to the natural impulse to eat something other than bread and water is such a task—this fighting myself for four or five days has fatigued me so mentally that I do not feel up to taking on the strain of fighting such a learned and brilliant antagonist as Judge Duke and his redoubtable associates, Messrs. Moon and Fife.

PLAINTIFF'S INTERVIEW WITH THE PRESIDENT OF NEW YORK LUNACY COMMISSION, 1897, 731-735, 863-865.

Q. While you were in "Bloomingdale" were you visited by Dr. Wise, then President of the New York State Lunacy Commission?

A. I was.

Q. When?

A. On or about the first part of July, 1897, within about ninety days of my incarceration in "Bloomingdale."

Q. Did you have any conversation with him at that time?
A. I did.

(By Counsel for Defendant: We object to this question and answer as irrelevant.)

By Counsel for Plaintiff: Q. Please relate that conversation and describe his behavior at that time.

(By Counsel for Defendant: We object to that question and any answer thereto, as hearsay, as it relates to a conversation with a third party.)

A. Dr. P. M. Wise bustled into my cell in company with Dr. S. B. Lyon, the Medical Superintendent of "Bloomingdale," without warning and said in effect, after being introduced, "You understand this visit is merely formal" and showed a strong inclination to leave the cell. Just before doing that he said, "I suppose you are here voluntarily." I said in effect, "Voluntarily, I should say not. I was arrested by two plain clothes men from Mulberry Street on perjured statements of relatives who are at odds with me, and brought here." I indicated a desire for him to sit down and listen to my case. He seemed very much disinclined to do that. I pointed to a chair at the foot of my bed in which I was lying, and he reluctantly took the chair, pulling out his watch as he did so. I then briefly—very briefly—I knew that Wise could leave when he wanted to—charged the Chanlers with perjury and conspiracy. He said in effect, "Are you aware of the gravity of these charges"? To which I said, in effect, "Are they any graver than to accuse me of insanity"? To which he made no reply. Shortly thereafter he took his leave saying that he would look into the matter, and that was the last that I ever saw of Dr. P. M. Wise. Now, Dr. P. M. Wise had the power and it was his duty to free, to turn loose, any and all prisoners in any insane asylum, private or public, in the State of New York. He had this power as President of the Lunacy Commission, given him by the New York Legis-

lature. He never so much as put his foot inside that door again during the nearly four years I was there. He never communicated with me directly or indirectly, and I have no reason to suppose that he gave the matter another thought—I don't like to say anything against a man who has been punished, and Dr. Wise has been punished. I shall explain how in a moment, but this is not a case of "Self-preservation being Nature's first law—my case is so strong that I might dispense with mentioning Wise any further, if it was simply a case of self-preservation, but my case is much greater than that. My case has for its principal object the reformation of the wicked lunacy laws of the State of New York, the States of New Jersey, Pennsylvania, and about fifty per cent. of the States of this great Union, horrible as it is to tell, and with that great aim in view I would be derelict in my duty if I left one important stone unturned. Dr. Wise was caught bribing —caught with the "goods on him" and discharged within four years, less than four years of the time he came in and winked at the crime that was perpetrated on me, and that he knew was perpetrated on me, from my conversation. He was caught red-handed by the Governor of New York, in bribing the keepers, the owners and officials in various private insane asylums in New York—when I say bribing, he was not bribing them directly, but they were bribing him in this way—it appeared fully before the Commission appointed by the then Governor in the early winter of 1901, as I remember it, certainly the winter of 1900-1901. This Commission sifted the evidence and found that Dr. Wise was in the habit of getting the owners of private lunatic asylums in New York State —New York State is honey-combed with private insane asylums—getting them to subscribe to a wildcat copper mining scheme in a mine out in Arizona—to buy stock in a wildcat copper mine in the wilds of that great State—I have been there and admire the beauty of the great and beautiful State of Arizona. He was therefore dismissed from office. I do not lift the veil over how much stock the Board of Governors of The Society of The New York Hospital subscribed to in the

Arizona wildcat copper mine of Dr. P. M. Wise. I do say that if Dr. Wise had not been a bribe giver, or rather a bribe taker—if he had been an honest official he would have had no interest in allowing me to languish for life behind the bars of a madhouse cell.

(By Counsel for Defendant: We make the same objection. Conversations with Dr. Wise are in no sense evidence in this case.)

By Counsel for Plaintiff: Q. Was any one else present at this conversation or interview?

A. Yes. Dr. S. B. Lyon, the Medical Superintendent of "Bloomingdale," who was interested in "Bloomingdale" being a financial success, Dr. Lyon being there not for his health, but for his handsome salary, and that salary being paid by the rich geese that laid the golden eggs, like myself; they laid them contrary to their will, but laid them nevertheless.

Q. Did you then know the duties which were supposed to be performed by this official?

A. I certainly and assuredly did, and that was the reason why I made so strong—if I do say it—an indictment, but not stronger than it was truthful, against the other side, accusing them of crime out and out, of conspiracy and perjury, so that, as he was the last straw I had to grasp at as regards law in New York, that is, possible help I had, he would not be in the dark regarding the situation. I made a desperate effort to interest Dr. Wise in the crime that was going on, knowing that he could rectify it, remedy it, cure the evil.

Q. Did you ever see him again?

A. Never.

Q. Were there any other members of the New York State Lunacy Commission?

A. No none.

* * * * * * * *

By Counsel for Plaintiff: Q. Mr. Chaloner, have you a letter from Mr. C. E. Atwood relative to a call from Dr. P. M. Wise?

(By Counsel for Defendant: The same objection.)

A. I have.

By Counsel for Plaintiff: Q. Have you any newspaper clipping in reference to the removal of Dr. Wise from the State Lunacy Commission?

(By Counsel for Defendant: The same objection.)

A. I have.

By Counsel for Plaintiff: Q. Mr. Chaloner, I hand you a letter signed by C. E. Atwood, also a newspaper clipping, and ask whether or not you identify them.

(By Counsel for Defendant: The same objection.)

A. I do.

By Counsel for Plaintiff: Q. Will you please describe them?

(By Counsel for Defendant: The same objection.)

A. The letter is from Dr. C. E. Atwood, of the "Bloomingdale" medical staff, and is as follows:

"Dear Mr. Chanler:

Dr. P. M. Wise, Pres. of the State Commission & Mr. Parkhurst, commissioner, will call on you after lunch, probably between 1:30 and 2 P. M. to-day.

"Very truly,

"C. E. Atwood."

"June 16."

I have a pencil mark note made at the time—"The latter (meaning Mr. Parkhurst) did not show up. Dr. P. M. Wise called with Dr. S. B. Lyon 6-16-98.—J. A. C." The newspaper clipping is from the Philadelphia Ledger under date 12-22-'00, and says: "Governor Roosevelt intends to leave to his successor the appointment of President of the State Lun-

acy Commission in place of Dr. Wise, whom he has removed from office."

(By Counsel for Defendant: We make the usual objection).

By Counsel for Plaintiff: We now file the letter and newspaper clipping just referred to by the witness, and ask that the same be marked for identification and made a part of the evidence in this case.

The said exhibits are marked "Plaintiff's Exhibits No. 115 and No. 116.

(By Counsel for Defendant: We object to the introduction of these exhibits for the reasons heretofore stated.)

PLAINTIFF VISITED IN "BLOOMINGDALE" BY WILLIAM ASTOR CHANLER, 736-740.

Q. Who visited you next, Mr. Chanler?

(By Counsel for Defendant: Same objection.)

A. Colonel William Astor Chanler came in January or February, 1898, visited me, and we had a most charming conversation of about an hour and a half. I was very much surprised to receive a visit from Colonel William Astor Chanler, from the fact that he had quarreled with me violently in December, 1896, on my trip to Virginia. I boarded the train at Jersey City at the uncomfortable hour of 8:00 A. M. and, to my surprise, found Colonel William Astor Chanler at the ticket gate. He was on his way down to Kentucky, to a stock farm of blooded horses that he had there. He was then on the "turf" and was running race-horses. He got into conversation with me, and I asked him concerning the running of a horse named "Salvaces," a mare named "Salvaces" whose running had been very unsatisfactory to

the betting public on a certain occasion. I don't like to say this, but I must do it for the same reason that I had—to leave no stone unturned—regarding Dr. P. M. Wise. Colonel William Astor Chanler was accused of "pulling his horse" in so many words—I don't mean that they used the word "pulling" actually, but it was so directly inferred that nobody who knew what the term meant could miss the meaning and at the end of an article in the New York Journal, now the New York American, it concluded by saying, in effect, "It would be a good thing for the racing public if Colonel William Astor Chanler would retire to the jungles where he achieved such a success as an explorer," or words somewhat to that effect. Of course, "pulling a horse" means that the jockey is given orders not to let a horse win. The lack of honor in that act requires no comment. I regret exceedingly having to draw attention to such a thing, but if the Chanler family were an aggregation of Angels my case would be more difficult of explanation than it is at present. If they were an aggregation of Angels I would be all right, they would never have done what they have done. I wanted to find out from Colonel William Astor Chanler if there was any truth in the accusation of "pulling his horse." To my horror I found it was absolutely true. Colonel William Astor Chanler did not say bluntly and stupidly "Yes," but he did not deny it and laughed, and by his smile and the humorous way in which he took my question he acquiesced in the charge and concluded his statement by saying, in effect, with a smile and a laugh, "after the races I thought it would be a good thing to put "Salvaces" in the Stud," by which he meant. to retire her from racing and breeding her. So soon as I knew what Colonel William Astor Chanler had been guilty of, I gave him to understand that it was no laughing matter; that however humorous the thing might appear to him, I put it in such pointed language that he saw no further humor in it, and became distinctly irritated, and finally what was very much like a quarrel took place—I expressing my strong disgust for his doing such a thing—and it re-

sulted in our taking up positions at opposite ends of the parlor car and not speaking again during the trip. That was the last time that I saw the Colonel, or heard from him directly or indirectly; that is to say, over a year had elapsed and I was surprised at seeing the Colonel. I was surprised only in a way—by which I mean I instantly recovered from my surprise, because I instantly saw his motive, which was not a friendly one at all, but to spy on me and see how I "stood the racket," how I stood my confinement in a madhouse cell in which I had been, at the time of his visit, nearly a year. Evidently the Chanler family had sent him as a spy, to spy out the land and see if I could keep my reason behind the madhouse bars. I greeted him with the same suave politeness that he showed towards me, and we talked on every subject practically, but the subject in hand, namely, my imprisonment, and at the end of the conversation of about an hour and a half, during which, of course, no reference whatever was made to "Salvaces" or our previous conversation on the way to Virginia and Kentucky—at the end of this conversation, which had largely to do with his pending political hopes—he had just been elected as assemblyman at Albany—I told him that I felt it my duty to give the two Chanler gentlemen a chance to get away from States prison, and as I expected my case would come up in a short time, or in a year or so anyway, if not sooner—it might come on at any time—the statute of limitation had not yet stepped in, and had my case come on during that period, Messrs. Winthrop Astor Chanler and Lieutenant Governor Lewis Stuyvesant Chanler and Arthur Astor Carey would inevitably have been indicted for perjury and done time in Sing Sing. I abhorred the idea of my father's and mother's offspring wearing stripes. To that end I evidently in good faith—the circumstances proved that—gratitously said as follows, gratuitously pointed out the way of escape—I said in effect, that I regretted very much the possibility of the said gentlemen going to jail, but that they would inevitably go there when my

case came up, and for that reason I urged that they and their families migrate to the Argentine Confederation, because, as I understood, that was one of the few countries in the world between which and the United States there was not an extradition treaty, and they would therefore be safe from arrest and from extradition. I said this gravely, with the gravity the situation then merited, and it was received as gravely by the Colonel, who promised to deliver the message. He then asked me if I would like to have him call again, and I said (and this is the strict truth), that I would be delighted. He said he would, but never did, and from that day to this, I have never seen the Colonel.

(By Counsel for Defendant: Same objection, irrelevant and incompetent.)

PLAINTIFF'S ALTERCATION WITH WINTHROP ASTOR CHANLER, 764-770, 924-932.

Q. On page 39 your brother testified that he generally had an irritating effect on you. Kindly explain why Winthrop Astor Chanler always had that effect on you, if such is the case?

(By Counsel for Defendant: The same exception.)

A. I regret to make this frank remark, but in the interest of justice, I must. Mr. Winthrop Astor Chanler always had, or of late years had an irritating effect on me, because of late years he had developed into an inveterate liar, and I cannot and never could abide a liar. I have got no earthly use for him. He is non-scientific; he is like a broken reed, he is of no use, and I will not bother with a liar. I did not force myself on Mr. Winthrop Astor Chanler's society. Far from it. I gave him as wide a berth as I give all liars, but when in the course of business, he being engaged in the same enterprise in the South that I was, having

capital invested in the Roanoke Rapids Power Co.—when in the course of business we were thrown together in directors' meetings, his contempt for the truth, I frankly admit, did irritate me.

Q. Mr. Chaloner, at the bottom of page 39 and at the top of page 40, your brother testified that, having lost his temper, he went over to where you were in bed, and would have struck you if you had been standing, but when he saw how absurd the situation was, he went back and sat down and said no more. Kindly state what did happen at that time.

(By Counsel for Defendant: We object to this question as leading, and because it does not appear in this matter as a part of the record.)

A. The occasion for this altercation was that Mr. Winthrop Astor Chanler had made a false statement on a material point at the directors' meeting of the Roanoke Rapids Power Co. at the Hotel Kensington in December, 1896, and I, before answering this false statement of Mr. Winthrop Astor Chanler, wished to be sure that I was right in my view of the matter and appealed to the secretary to refer to the minutes and see if I were correct in my view of the situation. He did so and said I was correct, whereupon I was frank to say to Mr. Winthrop Astor Chanler before the assembled board of directors that he was a liar. Mr. Winthrop Astor Chanler had sided against me at this directors' meeting, and against his own interest, and had voted against his own pocket, and had joined forces with a man named Habliston, William Habliston, a former funeral director, "furniture dealer" of Petersburg, whom I had elevated practically from that position, from which he was pushed by influential people in Richmond, business people, until now the said Habliston is the president of a bank in Richmond. I had always distrusted Habliston, considered him tricky, vulgar, and illiterate. He cannot talk

English without making grammatical errors, and I saw in him a cold-blooded, selfish climber, a man who was born in humble walks of life, and by a large amount of luck and a certain amount of hard work and trading ability, mercantile ability, had got on the ragged edge of society. I had the holdings of those members of the Chanler family, who held stock in the Roanoke Rapids Power Co. behind me. However little they liked me, they always voted as I said at meetings. I, through the Chanlers, controlled half of the Roanoke Rapids Power Co. stock; Habliston and a friend of mine, the late Major T. L. Emry, of Weldon, N. C., who was the father of Roanoke Rapids, he having discovered the water power there which made the town what it is, and a Jew named Cohen, a pretty tricky Jew, also from Petersburg and a friend of Habliston—they, with some small stockholders, controlled the other half of the Roanoke Rapids Power Company stock. Habliston was the ambitious member of that triumvirate—wanted to get into society, etc., and Major Emry and Cohen did not stand in his way. Habliston wanted to be made president of the Roanoke Rapids Power Company, with a view to traveling on that honor, besides being associated with the Chanler family. That would give him a certain amount of social prestige besides business prestige, which he intended to use and did use to further his social aims in Richmond. There was an agreement between us, since I controlled the Chanler holdings, and I did not wish any further social advantages than I already had, did not care for the—to me—empty honor, of the presidency of a business corporation, I was prefectly willing that Habliston should have the presidency of the Roanoke Rapids Power Co. I and the other Chanlers in the Company and some small stockholders who followed our lead, owned exactly half—*to one share.* There was not one share difference between the holdings of the Chanlers and the said triumvirate—Habliston, Cohen, and Emry. Of course, the Chanlers could have obtained control of this very valuable property, worth two millions—that was its original capitalization in 1893, underwrit-

ten by a Philadelphia Trust Company, when the 1893 panic came on and the Trust Company backed out afterward on account of the panic. The stock was reduced to $200,000 years later for economic reasons purely, the property was the same—we could have gotten control by buying one share of stock, which we could easily have done if we had wanted to pay even a thousand dollars for one share, or two thousand. Habliston knew this, knew that we could buy one from the small stockholders on his side, and got us to agree not to do it. And there was an agreement resting only on our honor—when I say "only," I mean it was not binding in law—that we were not to increase our holdings, nor one of the Chanler side. Habliston, therefore, held his position as president of the Roanoke Rapids Power Company on my sufferance, as there was no reason on earth why I should have agreed not to buy one share of stock to gain control of the company, but out of generosity, or whatever one chooses to call it, I did not object to binding myself not to increase my holdings or any of my side. *This obligation that Habliston was under did not prevent him from feathering his nest at the Chanlers' expense on every occasion.* At this meeting of the Roanoke Rapids Power Company in December, 1896, in my rooms at the Hotel Kensington, the question came up before the Board as to the rental, as I remember it, which Habliston, Cohen and Emry were to pay for the saw-mill, leasing the saw-mill—which belonged to the Roanoke Rapids Power Co. At this distance of time, I am unable to state accurately, positively, whether these were the details, and for the further reason that the result was all spread on the minutes of that meeting. As I have said on a previous day in this deposition, when I have committed to paper some event, I dismiss the details of that event to a greater or less extent. For that reason I am not absolutely certain as to the details that were up for voting before the Roanoke Rapids Power Company directors, but, broadly speaking, it was a question of the personal interest of the "triumvirate" as opposed to the interest of the Company of which the "trium-

virate" were directors. I was looking out for the interest of the Company, and Habliston and his side were looking out for their individual interest, very naturally. There was a more or less heated discussion of this point between myself and various members of the said triumvirate, and to my utter surprise and disgust, I found that Winthrop Astor Chanler was sufficiently spiteful and treacherous, and also sufficiently lacking in business acumen to be against his own interest as a stockholder in the Roanoke Rapids Power Company, and sided with Habliston and his side against me, who was standing up for the interest of the stockholders. This desertion of me on the field of battle (I flag the Docs)—the desertion of his own side to the other side, characterized Mr. Winthrop Astor Chanler's conduct and character in life. What I have just said will give an idea of the tension which existed at the time of the altercation between Winthrop Astor Chanler and myself.

(By Counsel for Defendant: And we further object to the statement hereinbefore given as highly irrelevant to the issue, and also containing matters of record, because the records themselves are the best evidence; and we also object to the conclusions and opinions of the witness.

By Counsel for Plaintiff:

Q. Mr. Chaloner, have you in possession those records of which you have just spoken?

A. I have not. They are in, or should be in, North Carolina.

* * * * * * *

By Counsel for Plaintiff:

Q. Mr. Chaloner, on page 65 of your brother Winthrop Astor Chanler's deposition he states that the claims of the Self-Threader, the Saint Margaret's Home and the mortgaged interests were something enormous. Kindly tell us who met those claims prior to your incarceration in "Bloomingdale"?

(By Counsel for Defendant: We make the same objection to the question and answer.)

A. I did.

Q. On page 67 your brother states that you told him that the equity over the mortgages on 298 Broadway, which belong to you would restore the $50,000, the income of which was used by you in the upkeep of Saint Margaret's Home for Orphan Girls. Kindly state what you did say to your brother relative thereto?

(By Counsel for Defendant: Same objection.)

A. There was sufficient equity in 298 Broadway to put a $70,000 mortgage of Saint Margaret's Home property on the said 298 Broadway at 4%, the income of which would more than support the Home. This has been fully gone into and explained in my book "Four Years Behind the Bars."

Q. On page 70 of your brother's deposition he states that prior to 1897 you went to New York and remained there "Pretty steadily," with short absences through the year. Now what have you to say to that?

(By Counsel for Defendant: Same objection.)

A. That is utterly false. I gave up my residence in New York at the Everett House, Union Square, in 1894, and took it up at "The Merry Mills" and "Hawkwood," both in Virginia, with infrequent visits to New York. In February, 1895, I took it up at Roanoke Rapids, North Carolina, as resident director of the Roanoke Rapids Power Company eventually, that was my title, and after February, 1895, after the divorce between Princess Troubetzkoy and myself, I took it up mentally at "The Merry Mills," Cobham, Virginia, and actually about May 1st, 1896, and kept it there until July 13th, 1905, when I transferred it to Roanoke Rapids, North Carolina.

Q. Mr. Chaloner, your brother, on page 75, states that your former valet, Hartnett, was in your employment while you were incarcerated at "Bloomingdale." What have you to say regarding that?

(By Counsel for Defendant: Same objection.)

A. It is unqualifiedly false. I have a letter from Hartnett postmarked "Madison Square, New York, November 9th, 1900, and received by me on or about that time while I was in "Bloomingdale," which is enclosed in an envelope bearing the printed address of "McKim, Mead & White, 160 Fifth Avenue, New York, Box 175," and the letter is signed by Hartnett.

(By Counsel for Defendant: So much of the said answer as relates to any letter is objected to as clearly improper unless the letter relates to the testimony, and also the letter is not produced.)

By Counsel for Plaintiff:

Q. Mr. Chaloner, I hand you a letter and ask you to state if this is the letter from Hartnett, of which you have just spoken?

A. Yes, it is, and postmarked "Madison Square Station New York, November 19th, 1900, 5 PM"; in the lower left hand corner it has "C. P. Harnett, care of" in hand writing, then printed on the firm envelope "McKim, Mead & White, 160 Fifth Avenue, New York" and in hand writing "Box 175." The letter is a typewritten letter of two pages and is dated 160 Fifth Avenue, November 17th, 1900, and reads as follows:

"Dear Mr. Chanler:—

I told Mr. Butler about your badge, and he has taken the getting of it out of my hands and said that he would have it attended to. You no doubt must have

it by this. Mr. Butler also sent for your tea to Richmond.

Mr. Lewis is here to stay this trip, and has rented 190 Madison Ave., for the winter. Galvin tells me Mr. Lewis goes to court every day.

Legg* called on me here at the office yesterday. Legg also tells me Maxwell was sent to a drink sanatorium some time ago, but is now back in the city and is worse than ever. I found out from Legg why Maxwell was in the Tombs, it was because he tried to beat a hotel. He and Legg called here on the same day about a month ago to see Mr. White. I had the man who showed them in put them in the small reception-room together, so that when Mr. White came in he could see them as he walked in. When he did come in he threw a side glance at them and passed on, I guess he figured, it put a pretty hard combination, and sent him out his time worn tale of "too much business" to be interviewed "but that they should call on Mr. Butler who would do whatever they wished done. Of course Mr. Butler having no chords of sympathy vibrating in his breast that they ever heard of, they decided they would jeopa[illegible] a good many dollars in preference to giving him a "fall." This, according to Legg's tale yesterday, is what they did when they left Mr. White's office. Legg says he and Maxwell went out into the cold cheerless streets, and Maxwell said, if he only could have a good drink of whiskey it would do him a world of good. "My!" said he, "but isn't this a cold raw day! B-r-r-r." "Why," said Legg, "if that is all you want we will go somewhere and get it." They straight away hied themselves to the Hoffman House, Legg inserting a clause in the agreement, just before reaching the bar, that the drinks were not to cost more than 50 cts., Maxwell bowing humbly to this decision. When the whiskey was set before them Maxwell took a long deep draught,

*Inventor of the Self-Threading Sewing Machine Attachment.

and said "My! but that goes right to the spot." At this stage of the proceedings, it appears Legg's artistic feelings were aroused by the splendor of his surroundings; and while he had his glittering eye fixed on some of the old Masters, his whilom friend Maxwell took a second "fall" out of the bottle. The bartender saw this and made the check forty-five cents. When Legg settled down to business again, Maxwell, with a painful facial expression imparted the information to him that he "had a sudden chill" and that another drink might counteract it. Another drink apiece was taken, and then Legg asked for the check. He was naturally surprised at the hugeness of the count, as he only saw Maxwell take two drinks. Anyway Legg settled, and they once more faced the chilling blasts. Those three whiskeys had done Maxwell so much good, that the old fires of long ago began to burn with a vengeance; and he started in to tell Legg what a grand thing it is to be able to get what you want without paying for it, and before many minutes Legg found himself in the cafe of the Hotel Normandie. Here Maxwell proposed to slay "the fatted Calf." He impressed on Legg again "the rawness of the day"; that something substantial to eat would not be amiss. Legg acquiesced; thinking Maxwell would pay this time sure. Maxwell, thereupon called the "garcon," who submitted to them the bill of fare. The order, as near as Legg could recollect yesterday was as follows:

2 whiskeys
Bisque soup
2 whiskeys
Hot rolls
Steak
Sliced tomatoes on ice
2 whiskeys

All this amounted to $7.20 and they ate like the Kings of old. When the bill was presented to Maxwell he

suddenly remembered how his laundry bill was so large that very morning, and now he did not possess a copper, however, Legg could pay and he would see to it that Legg was paid sooner or later. Legg put up the cash again, and it now dawned on him that he was being "used" so he arose and left disgusted.

Now comes Legg's story of how he was "telegraphed for" to take Maxwell to a Drink Cure.

Legg received a telegram from Philip at Allendale asking him "to come on to New York at once, expenses guaranteed, bring Maxwell 120 B'Way." Legg sent at once a favorable reply to Philip. He then shaved as smooth as possible, and prepared himself in other ways so as to give Maxwell the impression of "A man out for a booze." Maxwell was at the Normandie, a pretty swell joint for a hotel beat. When Legg arrived at the Hotel he inquired of the suave clerk for Mr. Maxwell. He was staggered for an instant by the reply of the clerk to his question "I am not prepared to say:" Legg being an experienced bluffer himself, he brought all his powers in that line into play, and at once threw the clerk off the track he was on, and found Maxwell was in the cafe. He at once "bearded the lion" and found him remonstrating feebly with one of the clerks about a bill of $60.00, long since due. Legg broke the monotony (to Maxwell) of this harangue, and asked him to have a drink? After the drink Legg suggested a drive down to see Philip. Maxwell at once began "to smell powder" and said "No! No! He would rather they take a walk." This was agreed to, and they started off. Their first halt was at a saloon where four whiskeys were taken aboard, and from the way Legg explained it their course was like this —|—|—|—| first a saloon on this side of the street, and then one on the other, whichever one seemed the most attractive. After many mishaps they arriver late in the afternoon at 120 B'Way, where, according to Legg all the Maxwell family and

next of kin were assembled awaiting the coming of the victor and vanquished. Legg remembers nothing after this, and the last thing he saw before he closed his eyes, was Weston and his son Charlie. Since then Legg has been trying hard to get from Philip his "expenses." He says he will never get a cent and I guess he is in a position to know.

Maxwell has a record of never having been in prison for a longer period than 23 hours, never a full day. He notifies his friends and they come and get him out. At the hotel where he is now Legg tells me, he has run a bill of $40.00 and that he will be in jail before this week is out. His scheme is a great one. I enclose a clipping which will explain itself.

Most respectfully,

CHARLES HARTNETT,

P. S.

I would not have written at such length but I thought it would interest you to know how Maxwell lives and thrives.

By Counsel for Plaintiff: We now file the letter referred to by the witness from Hartnett, and ask that the same be marked for identification and made a part of the evidence in this case. Said exhibit is marked "Plaintiff's Exhibit No. 149."

(By Counsel for Defendant: The introduction of this letter after being read is excepted to as not the best evidence.)

By Counsel for Plaintiff:

Q. Mr. Chaloner, do you wish to make any further statement in reference to the Hartnett letter which has been filed?

(By Counsel for Defendant: Objected to as the form of the question is too general.)

A. Yes, I do. This letter shows that my ex-valet, Charles Hartnett, was in the employ of Stanford White when this was written. This letter also corroborates my statements about Maxwell's inebriety, and that Legg lived at Allendale, N. J. This letter shows on page 2 "Legg received a telegram from Philip at Allendale." This also shows that Maxwell was in jail. I had heard of this episode, of his brief sojourn in the Tombs and this details it. The clipping alluded to is one exhibited with the letter and refers to Miss Minnie Ashley, the talented actress and wife of Col. William Astor Chanler.

(By Counsel for Defendant: We object to the introduction of this letter as well as any comments thereon above made by the witness because it is secondary and not the best evidence, and because it is entirely irrelevant to the issue and because the clipping referred to is merely hearsay and it does not appear even from what newspaper it was taken.)

By Counsel for Plaintiff:

Q. On page 77 your brother, referring to his quarrel with you at Hotel Kensington, states that you said to him "I am going to have your matters looked into—the estate accounts looked into—and have them examined by an accountant, for I am not at all sure things have gone right." What have you to say in regard to that?

(By Counsel for Defendant: Objected to as leading and incompetent.)

A. I did not say that. I said "I am going to have the books looked into, as there has been but one accounting given of the estate in ten years." I afterwards found that there had been two accountings, but only two in ten years, and I was

careful to write a note, write a letter to each member of the board of directors of the Roanoke Rapids Power Company who were present. I wrote that and sent it to them the next day, specifically stating that I meant no reflection on the integrity of Mr. Winthrop Astor Chanler. I did object to the laxity of the business methods of Morris and Steele, the lawyers for the Chanler estate, who were guilty of allowing a trust estate to send in but two accountings in ten years, and I believed that the estate was managed more to their interests than to the interests of the estate, but I did not say what Mr. Winthrop Astor Chanler said I said, and I never for a moment wished to impugn his integrity in money matters.

By Counsel for Plaintiff:

Q. On page 77 your brother states that "he had seen you only once after the quarrel in the Kensington Hotel. What have you to say relative to that?

(By Counsel for Defendant: Same objection.)

A. I *never saw him* after the Kensington Hotel affair. I was told by the proprietor of that hotel that the night it was proposed I was to be carried away by superior forces by Dr. Moses A. Starr and the unknown doctor and two unknown men outside the door, namely, the 12th of March, 1897, Sylvester J. O'Sullivan told me that Winthrop Astor Chanler was waiting in the lobby of the Hotel Kensington at that time and he waited there until Starr came down and told him that I would not go away that night. Winthrop Astor Chanler had come to gloat over what he anticipated would be my defeat at the hands of four vigorous men, and he would be in the lobby there to see me carried, bruised and bleeding, as I would have been if there had been a resistance, to "Bloomingdale." It was a fine example of his brotherly affection for me.

* * * * * * *

By Counsel for Plaintiff:

Q. Prior to 1897, what, if any, clubs had you been a member of at which boxing was practiced?

A. I had been a member of the Racquet Court, which later turned into the Racquet and Tennis Club; of the New York Athletic Club, and the University Athletic Club—three clubs.

Q. Did you practice boxing at those clubs?

A. Only at the Racquet Club, with O'Neil; no one else. I did that for years all through my undergraduate course with O'Neil—you may say four or five years—not only undergraduate, but as I remember it while I was studying law—certainly for three years as an undergraduate I boxed almost daily, as I remember, with O'Neil at the Racquet Club.

Q. Do you know a Mr. G. Hyde Clarke?

A. I do, well. I knew him for years. He was a rich man and married, lives at Coopertown, New York, friend of the late Bishop Potter, comes to New York in the winter frequently.

Q. I show you a letter dated December 14th, 1905, addressed to you and signed "G. Hyde Clarke," relating to this subject. Will you kindly state under what circumstances you received this letter?

(By Counsel for Defendant: The introduction of this letter is excepted to as clearly illegal and not the best evidence.)

A. This letter explains itself. The envelope is addressed to "J. Armstrong Chanler, Esq., Cobham, Va., and is postmarked 'New York, December 14th, 1905,'" and the letter reads as follows:

"Dec. 14, 1905.

Racquet & Tennis Club.
27 West 43rd Street.

Dear Archie:

Yours of the 8th forwarded from Cooperstown was received by me yesterday. I recall positively the fact that you were one of Jimmy O'Neil's best pupils & used to spar a great deal at the Old Club in 26th St. I cannot just now recall the fact that you sparred with O'Neil at the President's Reception in 1880 or 1881, but I have instituted a search in the records to obtain that fact. I will forward the testimony as soon as I can get it. It is absurd that any one should try to gain capital out of any statement that you may have made to the effect that you were a boxer. I was one of O'Neil's pupils myself. I know that you were a boxer & a damned good one too. I am sorry that you are having so much trouble & hope that you will succeed in clearing up your affairs & that the latter part of your life will run more smoothly than it has in the past. I shall always be pleased to see you.

Yours sincerely,

G. Hyde Clarke.

I am living for the winter at 123 East 38th St. with my family."

He was unable to find the records he mentions, probably because the club had moved its quarters from the old site in 26th Street to 43rd Street, and in the confusion the records had either been lost or destroyed.

By Counsel for Plaintiff: We now file the letter referred to by the witness, and ask that the same be marked for identification and made a part of the evidence in this case. Said exhibit is marked: "Plaintiff's Exhibit No. 151."

(By Counsel for Defendant: The exception to the introduction of this exhibit is renewed.)

By Counsel for Plaintiff: Please state whether or not you know Mr. William Fellowes Morgan?

A. I do.

Q. Was he a member of any club or clubs of an athletic nature to which you belonged?

A. He was a member of the "Racquet Club," aforesaid. He was also an alumnus of Columbia, and a celebrated football player, quarterback, in his day. Columbia did not have a very good team, but he was a wonderfully good quarterback, as I remember it, it was quarterback, either halfback or quarterback—I am very sure it was quarter.

Q. I show you a letter dated December 19th, 1905, addressed to you and signed "William Fellowes Morgan," relative to this subject. Kindly state under what circumstances you received this letter?

(By Counsel for Defendant: The letter and all evidence relating thereto is excepted to as clearly illegal and not the best evidence.)

A. It is addressed to "J. Armstrong Chanler, Esq., 'The Merry Mills,' Cobham, Virginia." The envelope is postmarked "New York, N. Y., December 19th, 1905," and has in the upper left hand corner "William Fellowes Morgan, Arch 5, Brooklyn Bridge, New York, N. Y." The letter reads as follows:

"New York, Dec. 19th, 1905.

J. Armstrong Chanler, Esq.,
Cobham, Virginia.

My Dear Archie:

It does me good to see your handwriting again. I remember that you used to box with Jimmy O'Neil, but as I did not attend any of Mr. Travers' receptions I did not have the pleasure of seeing you do it in public.

I am sorry that you are having so much trouble with the lawyers.

Faithfully yours,

Wm. Fellowes Morgan.

Alexander Moir,
Notary Public,
N. Y. County, N. Y.
(Seal)"

By Counsel for Plaintiff: We now file the letter referred to by the witness from William Fellowes Morgan, and ask that the same be marked for identification and made a part of the evidence in this case. Said exhibit is marked "Plaintiff's Exhibit No. 162."

(By Counsel for Defendant: The introduction of this exhibit is objected to as clearly illegal and not the best evidence.)

PLAINTIFF AS POOL-PLAYER, 1055-1057.

By Counsel for Plaintiff:

Q. How many clubs of a social nature did you belong to prior to 1897?

A. Somewhere around a dozen.

Q. Did all these clubs contain billiard rooms?

A. They did, as I remember it, every one of them. I would like to state on this record here that I apologize to Mr. Dunn; I misunderstood him in putting the question, when he said, "How many." I think the question was to please name the clubs and I remembered that I named the clubs in the deposition in 1908, hence my remark.

Q. Please state whether or not you played pool, or billiards occasionally with a friend in these clubs?

(By Counsel for Defendant: Objected to as irrelevant.)

A. I did, particularly in the Manhattan Club, then in the old A. T. Stuart Building, northeast corner of 34th Street and Fifth Avenue. I never played billiards, that was a game I had no skill in, but I played pyramid pool, fifteen-ball pool, and the game I played was known as solitaire. It was a new game of play which came in about 1894, and the advantage it has over ordinary fifteen-ball pyramid pool is that the player's game does not have a chance to "get cold" as it does in the ordinary game of pyramid pool, when the player sits down after he had made a miss. In solitaire pyramid pool the game is to pocket the balls in the fewest number of shots, and the player plays straight on through the game from the time he "breaks" the balls until he finishes the game, when his opponent, if he has one, takes the cue and does the same. This game is very strict in that you must name the pocket before pocketing the ball; you must name the pocket it is going into, and all balls that are pocketed on the "break" are "spotted." I became quite an adept at this game (if I do say so. I would not say so under other circumstances), with the result that I have pocketed the fifteen balls in seventeen shots. I have not been able to do anything at this game since I was put in "Bloomingdale." I found to my great regret that I could not bend over a pool table without causing me pain in the spine, and I have reluctantly, after various attempts, had to stop playing pool on my full length pool table at "The Merry Mills," so that now I could no more pocket fifteen balls in seventeen shots than I could fly.

(By Counsel for Defendant: All of the foregoing answer is excepted to as irrelevant.)

By Counsel for Plaintiff: Please state whether or not while you were abroad and while you were at college you played pool?

(By Counsel for Defendant: Excepted to as irrelevant.)

A. Yes, more or less, but I did not play well, I could not do anything like putting in fifteen balls in seventeen shots before 1896. In 1896 I practiced at "The Merry Mills" and my game improved so that I could do what I have said. The progress was very rapid, two or three months' practice put me where I have described, but previous to that in my clubs, and in Europe, previous to 1896, I had played an awfully poor game. I can't explain why I improved to such an extent. It was not that my hand was more steady or my eye any more steady—my hands were always steady—my pistol shooting had always been good, but my pool playing, no matter how much practice I put into it, did not improve until 1896, when in about ninety days I got the above capacity.

(By Counsel for Defendant: All of the above answer is excepted to as irrelevant.)

By Counsel for Plaintiff: What have you to say as to fencing and sparring?

(By Counsel for Defendant: Same objection, as above stated.)

A. Just what I have said above in that connection.

CHOATE, JOSEPH H., SR., 943-950.

By Counsel for Plaintiff: Q. Was any other Governor of "Bloomingdale" interested in your being confined at this time?

(By Counsel for Defendant: Same objection, and with the additional objection that it is irrelevant to this issue.)

A. Yes, Joseph Hodges Choate, Sr.

By Counsel for Plaintiff: Q. What was the name of the "Committee appointed subsequent to the hearing" before the Sheriff's jury?

(By Counsel for Defendant: Same objection; this is a matter of record.)

A. Prescott Hall Butler, of the then firm of Evarts, Choate & Beeman, whose head was Joseph Hodges Choate aforesaid.

By Counsel for Plaintiff: Q. What is your opinion, as a lawyer, as to the ethics involved in this proceeding?

(By Counsel for Defendant: Objected to, as calling for the conclusions and opinion of the witness.)

A. Highly questionable, for the reason that I had denounced the action of the Chanlers in putting me in "Bloomingdale" as they did, without trial, without opportunity to appear and be heard, and I denounced the "Bloomingdale" authorities for holding me there after they had had time to "observe" me and see that I was sane and safe, and I denounced the lunacy laws of New York as utterly illegal and vile, in that they tolerated such a barbarous state of affairs, and said that when I got out I "was going to raise hell"; *that I was going to show up without fear and without favor every conspirator, male or female, connected in the remotest degree with the rascally conspiracy; that this exposure would inevitably lead in time to a reformation of the lunacy laws of New York, which said reformation* would interfere with the income of Joseph Hodges Choate, he being a Governor of the Board of Governors, and it being a money-making concern and not a public institution, in which high fees were charged and did no charitable work that it did not have to do. The charitable end of "Bloomingdale" is a farce; it is simply a tax-dodging device, to avoid taxes on its large real estate holdings right in the City of White Plains, and in

ning that they take in enough Westchester pauper lunatics to ive them the name of being charitable and thereby avoid taxtion; that the vast bulk, ninety per cent. in a conservative stimate, of the patients of "Bloomingdale" are pay patients, e as high a figure as each and every patient can be forced to ay. Take my case: I was robbed of several thousand dolrs a year, at a conservative estimate—over $4,000.00 because did not eat or expend in the expenses of attendants more an I could have got at the public lunatic asylum at Middlewn, New York, for twelve hundred dollars a year, and I as charged one hundred dollars a week for this at "Bloomngdale," I being a vegetarian and living principally on baked tatoes, lettuce, salad and bread and fruit. A reformation these laws—take one instance only—by which they would t an honest, instead of a dishonest, State Commission in unacy at Albany; a commission who would do what they re paid to do; and stand between the citizens of the United ates, or of New York, and said illegal life imprisonment, r what they were worth, in these private madhouses in New rk; men not like *Dr. P. M. Wise who sent me and left me ing there to rot, and who was afterwards discharged by the overnor of New York for dishonesty in office, for taking fts from the owners of madhouses throughout the State, r leaving patients there and not making the owners of pri-te insane asylums, through him, low*—a reformation like s would interfere with the income of Joseph Hodges Choe, Sr., not to mention his crookedness and dishonesty in be connected with such a reprehensible institution as "Bloomngdale," the Society of the New York Hospital called Bloomingdale."

By Counsel for Plaintiff: Q. Was Mr. Choate on the mmittee of Law of The Society of The New York Hoal, per their report of 1899?

(By Counsel for Defendant: The same objection.)

A. He was not. I was surprised at this. The explana of it is that his firm is private counsel for "Blooming

dale," and his time is taken up in supervising the conduct of cases in which "Bloomingdale" was put on the defensive whenever habeas corpus proceedings were brought by falsely alleged lunatics who were languishing in the cells of "Bloomingdale," to fight their way out. A man or woman won his way out thus, from "Bloomingdale," every year I was there, and during the fight for liberty, of a lady who was falsely imprisoned in "Bloomingdale," on a false charge of lunacy, and fought her way out, I, in conversation with one of the members of the medical staff of "Bloomingdale" at the weekly dance given at "Bloomingdale," which I attended out of curiosity, to study the habits of those among my colleagues who were really insane—study their habits while dancing or while sitting still and watching others dance. At one of these dances—I never danced, I would like to state, I have already stated that on a previous occasion, and I did not feel in a dancing mood; I can dance, but I did not dance at "Bloomingdale"—at one of these dances, a member of the medical staff in talking over this case, which was then on, and talking over its conduct—it was then being conducted in the Westchester County Supreme Court House in White Plains—said in effect, that when the attorney for the lady served the notice on Dr. S. B. Lyon, Medical Superintendent of "Bloomingdale," to allow her to be present in court at the habeas corpus proceedings which she had brought, he said, "We called up Evarts, Choate and Beaman, *the counsel for "Bloomingdale,'"* and he, laughingly said, "They told us to tear the summons up." I said, "What happened then?" words to that effect. He said, "The lawyer for the lady made a motion to have them in contempt" and the outcome of it was that this tearing up of the summons was only temporary. The next summons, that was written out immediately, was honored, in spite of Evarts, Choate & Beaman. It was in this conversational way, and without any cross-questioning or anything of that sort on my side, it came out that the real counsel of "Bloomingdale" were Evarts, Choate & Beaman. It was evidently something that Evarts, Choate & Beaman did not wish

to have known, because another lawyer—a Wall Street lawyer, whose name I have, but it escapes me in the hurry and rush of this end of the proceedings, now that speed is so essential in order to be ready for the preliminary call of the January calendar, but I can obtain that letter in time, I have it among my effects, and this letter shows that the counsel of Bloomingdale" is a New York lawyer in Wall Street, but unknown to fame; I never heard of him before, but a very respectable old gentleman who acts as "stalking horse" for the firm of Evarts, Choate & Beaman, who really are counsel for "Bloomingdale," but don't appear to be.

By Counsel for Plaintiff: Q. Was Mr. Choate then, as now, considered the leader of the New York bar in point of ability?

A. He was then certainly one of the leaders.

Q. Do you know that the firm of Evarts, Choate & Sherman now appears as counsel against the prisoners in actions brought to secure the liberty of people claiming to be improperly confined?

(By Counsel for Defendant: Objected to as irrelevant.)

A. I do.

Q. Do you know whether or not Mr. Sherman has actively appeared and testified against the petitioner in such proceedings?

(By Counsel for Defendant: Objected to as irrelevant.)

A. I do.

Q. Even when he was on the Committee of the persons trying to secure their freedom.

(By Counsel for Defendant: Same objection.)

A. Yes.

Q. Have you heard of the case of Mary Elizabeth Lewis?

(By Counsel for Defendant: Same objection.)

A. I have.

Q. Do you know, or have you heard, that Mr. Sherman was the committee of Mary Elizabeth Lewis?

(By Counsel for Defendant: This and all similar questions on this line are objected to as irrelevant and incompetent.)

A. I have.

Q. And that Evarts, Choate & Sherman represented her half-brother that had had her committed?

A. Yes.

Q. Have you been informed that Dr. Carlos F. Macdonald was the committing alienist in this case?

A. Yes.

Q. Do you know whether or not she was produced before a committee and after a full and comprehensive submission of her case the jury declared her sane and competent?

A. Yes.

Q. Do you know whether or not this is all a matter of record in the Supreme Court of New York?

A. Yes, it is.

Q. What was the name of Mr. Choate's firm in 1899?

(By Counsel for Defendant: Objected to as irrelevant.)

A. Evarts, Choate & Beaman, as I remember it.

By Counsel for Plaintiff:

Q. Do you know what it is to-day?

(By Counsel for Defendant: Same objection.)

A. Evarts, Choate & Sherman.

By Counsel for Plaintiff:

Q. Whom do they represent in this action?

A. Thomas T. Sherman, the falsely alleged committee of my person and estate.

Q. Is he a member of that firm?

A. Yes.

Q. Please state whether or not he succeeded Mr. Prescott Hall Butler, a member of that firm in 1899, as your Committee?

A. He did. He was appointed after Butler's retirement early in December, or November, the latter part of November, 1901, after my being declared sane by the Albemarle County Court, November 6th, 1901. *This appeared to put Mr. Prescott Hall Butler out of business. He first retired and then died within a few weeks after my being declared sane; he died in December*, 1901.

DR. STARR'S ACCUSATIONS AGAINST PLAINTIFF, 756-770.

Q. Mr. Chaloner, on page 21, your brother testified that Dr. Starr told him that you had a pistol which was under your pillow and that you talked continually of using that. What have you to say relative to that statement if it was made by Dr. Starr to your brother?

(By Counsel for Defendant: Objected to as leading.)

A. That is absolutely false as regards my continually talking about using it. I only spoke once about using it. I only had it under my pillow on the occasion—I only spoke once of using it when I had it under my pillow on the occasion of a threat by Dr. Starr to forcibly remove me by superior force. He said, in effect, "Resistance is useless; you must get up and come with me." (It was after dark at the time and I was in bed—a cold March night, March 12, 1897)—"Resistance is useless; there is another doctor in the next room and two more men outside the door." Dr.

Starr did not tell me where he was going to take me, did not give any authority for his high-handed assumption of authority over my personal liberty and rights, and as an American citizen, I did not propose to have my rights pirated, so to speak, by Dr. Starr, or anybody else, without putting up the best defense I was capable of, so I simply told Dr. Starr, in effect, almost word for word, "You know I have got the drop on you." I did not show the pistol. It was a self-cocker. Dr. Starr took my word for it and turned pale and said, in effect, "I know you have; I hope you won't take any unfair advantage of me." To which I replied, in effect. "No, I shall not take any unfair advantage of you, but I shall see that you do not take any unfair advantage of me." That closed the episode of the pistol. He never saw it, and I never before or after, hinted in the vaguest way at using the pistol, never did I mention using the pistol to him before or after. I had a pistol. I always travel with one—have it in my luggage when I travel, so that I will be prepared against burglars or what-not in strange places away from home, and I had this pistol under my pillow on this occasion because the peculiar request of Stanford White, asking for an unlimited power of attorney, followed by the peculiar actions of Dr. Starr in "butting in" on me, to use the vernacular, at my rooms in the Kensington Hotel without an invitation or request on my part, or permission, and his hanging around my rooms and me from the 13th of February until my carrying off to Bloomingdale, had made me aware that the situation looked a little peculiar, and in a peculiar situation, knowing something of the wickedness of human nature, I knew that "might was right," or was very liable to be, for that reason I had a revolver within reach on this occasion when in bed, and the result proved my foresight, generalship and judgment. Without that revolver, I believe and firmly state it under oath, I would be a dead man to-day. I am susceptible to pneumonia—that is a well-known fact of the Chanler family, we have a tendency that way. We are all strong, but pneumonia kills strong men quicker than

weak ones. It killed my father and mother, and one, if not two of my brothers. All of the said relatives of mine were in perfect health when they were stricken by this scourge, pneumonia, and died in a few days. No lingering illness, but it was contracted while in perfect health. They caught a chill, caught cold and died of cold, to use an old-fashioned nurse's phrase, "They caught their death of cold and died." I knew this, and I am always on my guard because I do not want to die at present. I have got various things to live for and I do not hanker for death. Starr's unprofessional, Russian Czar-like ukase that I was to get up out of bed on a cold March night and go to an unknown destination was one of the most jocular propositions after one has gotten over the horror of it that I have heard come from a man's lips, and I often wonder whether the family did not want to kill me out of hand by making me catch a cold, by driving me in a cold cab all the way from 15th Street to 42nd Street, and then riding in a heated railway train for twenty miles, and then get in a cold Bloomingdale omnibus and drive for another mile to the top of the hill that Bloomingdale is perched on in the purlieus of White Plains. I certainly would have a chance to undergo degrees of heat and cold in the above trip from 15th Street, New York, to Bloomingdale, White Plains, N. Y., and I respectfully submit to the Court and Jury if that was not a rather rash proposition, to insist that a man accept then and there, incontinently accept without argument and without delay, under threat of a physical licking or a struggle with four powerful men, for a man with an hereditary tendency to pneumonia?

HABLISTON, WILLIAM M., PLAINTIFF'S CONNECTION WITH, 765-771, 874-885, 885-896.

Q. Mr. Chaloner, at the bottom of page 39 and at the top of page 40, your brother testified that, having lost his temper, he went over to where you were in bed, and would have struck you if you had been standing, but when he saw

how absurd the situation was, he went back and sat down and said no more. Kindly state what did happen at that time.

(By Counsel for Defendant: We object to this question as leading, and because it does not appear in this matter as a part of the record.)

A. The occasion for this altercation was that Mr. Winthrop Astor Chanler had made a false statement on a material point at the directors' meeting of the Roanoke Rapids Power Co. at the Hotel Kensington in December, 1896, and I, before answering this false statement of Mr. Winthrop Astor Chanler, wished to be sure that I was right in my view of the matter and appealed to the secretary to refer to the minutes and see if I were correct in my view of the situation. He did so and said I was correct, whereupon I was frank to say to Mr. Winthrop Astor Chanler before the assembled board of directors that he was a liar. Mr. Winthrop Astor Chanler had sided against me at this directors' meeting, and against his own interest, and had voted against his own pocket, and had joined forces with a man named Habliston, William Habliston, a former funeral director, "furniture dealer" of Petersburg, whom I had elevated practically from that position, from which he was pushed by influential people in Richmond, business people, until now the said Habliston is the president of a bank in Richmond. I had always distrusted Habliston, considered him tricky, vulgar, and illiterate. He cannot talk English without making grammatical errors, and I saw in him a cold-blooded, selfish climber, a man who was born in humble walks of life, and by a large amount of luck and a certain amount of hard work and trading ability, mercantile ability, had got on the ragged edge of society. I had the holdings of those members of the Chanler family, who held stock in the Roanoke Rapids Power Co. behind me. However little they liked me, they always voted as I said

at meetings. I, through the Chanlers, controlled half of the Roanoke Rapids Power Co. stock; Habliston and a friend of mine, the late Major T. L. Emry, of Weldon, N. C., who was the father of Roanoke Rapids, he having discovered the water power there which made the town what it is, and a Jew named Cohen, a pretty tricky Jew, also from Petersburg and a friend of Habliston—they, with some small stockholders, controlled the other half of the Roanoke Rapids Power Company stock. Habliston was the ambitious member of that triumvirate—wanted to get into society, etc., and Major Emry and Cohen did not stand in his way. Habliston wanted to be made president of the Roanoke Rapids Power Company, with a view to traveling on that honor, besides being associated with the Chanler family. That would give him a certain amount of social prestige besides business prestige, which he intended to use and did use to further his social aims in Richmond. There was an agreement between us, since I controlled the Chanler holdings, and I did not wish any further social advantages than I already had, did not care for the—to me—empty honor, of the presidency of a business corporation, I was prefectly willing that Habliston should have the presidency of the Roanoke Rapids Power Co. I and the other Chanlers in the Company and some small stockholders who followed our lead, owned exactly half—*to one share.* There was not one share difference between the holdings of the Chanlers and the said triumvirate—Habliston, Cohen, and Emry. Of course, the Chanlers could have obtained control of this very valuable property, worth two millions—that was its original capitalization in 1893, underwritten by a Philadelphia Trust Company, when the 1893 panic came on and the Trust Company backed out afterward on account of the panic. The stock was reduced to $200,000 years later for economic reasons purely, the property was the same—we could have gotten control by buying one share of stock, which we could easily have done if we had wanted to pay even a thousand dollars for one share, or two thousand. Habliston knew this, knew that we could buy one

from the small stockholders on his side, and got us to agree not to do it. And there was an agreement resting only on our honor—when I say "only," I mean it was not binding in law—that we were not to increase our holdings, nor one of the Chanler side. Habliston, therefore, held his position as president of the Roanoke Rapids Power Company on my sufferance, as there was no reason on earth why I should have agreed not to buy one share of stock to gain control of the company, but out of generosity, or whatever one chooses to call it, I did not object to binding myself not to increase my holdings or any of my side. *This obligation that Habliston was under did not prevent him from feathering his nest at the Chanlers' expense on every occasion.* At this meeting of the Roanoke Rapids Power Company in December, 1896, in my rooms at the Hotel Kensington, the question came up before the Board as to the rental, as I remember it, which Habliston, Cohen and Emry were to pay for the saw-mill, leasing the saw-mill—which belonged to the Roanoke Rapids Power Co. At this distance of time, I am unable to state accurately, positively, whether these were the details, and for the further reason that the result was all spread on the minutes of that meeting. As I have said on a previous day in this deposition, when I have committed to paper some event, I dismiss the details of that event to a greater or less extent. For that reason I am not absolutely certain as to the details that were up for voting before the Roanoke Rapids Power Company directors, but, broadly speaking, it was a question of the personal interest of the "triumvirate" as opposed to the interest of the Company of which the "triumvirate" were directors. I was looking out for the interest of the Company, and Habliston and his side were looking out for their individual interest, very naturally. There was a more or less heated discussion of this point between myself and various members of the said triumvirate, and to my utter surprise and disgust, I found that Winthrop Astor Chanler was sufficiently spiteful and treacherous, and also sufficiently lacking in business acumen to be against his own

interest as a stockholder in the Roanoke Rapids Power Company, and sided with Habliston and his side against me, who was standing up for the interest of the stockholders. This desertion of me on the field of battle (I flag the Docs)—the desertion of his own side to the other side, characterized Mr. Winthrop Astor Chanler's conduct and character in life. What I have just said will give an idea of the tension which existed at the time of the altercation between Winthrop Astor Chanler and myself.

(By Counsel for Defendant: And we further object to the statement hereinbefore given as highly irrelevant to the issue, and also containing matters of record, because the records themselves are the best evidence; and we also object to the conclusions and opinions of the witness.

By Counsel for Plaintiff:

Q. Mr. Chaloner, have you in possession those records of which you have just spoken?

A. I have not. They are in, or should be in, North Carolina.

Q. On page 64 your brother states that Mr. Stanford White took charge of your property at your request—what have you to say relative to that statement?

(By Counsel for Defendant: We object to this as improper evidence.)

A. That is utterly false. Mr. Stanford White earnestly begged me to permit him and the distinguished sculptor, the late Augustus St. Gaudens, to become my powers of attorney—requested me to give him and Mr. St. Gaudens an unlimited power of attorney over my property, which I declined to do for the reasons aforesaid already explained. I did give him a limited power of attorney in 1897, before I was carried to "Bloomingdale."

* * * * * * * * *

By Counsel for Plaintiff:

Q. Mr. Chaloner, I hand you several letters—if these

letters relate to such proposed manipulation, will you please state how?

(By Counsel for Defendant: The same objection.)

A. The first is a letter addressed to me in the handwriting of and signed by William M. Habliston, the president of the Roanoke Rapids Power Co., alluded to on a previous day of this deposition. This letter is written on the paper of the bank of which he is president, the National Bank of Virginia. Before reading this and the next communication from W. M. Habliston, I will state that these are two rather illiterate communications. In a book, "Four Years Behind the Bars," which was written to check this attempted manipulation of my stock—"Four Years Behind the Bars of Bloomingdale; or the Bankruptcy of Law in New York," on file in this case, in the foreword of that book I describe Habliston as an ex-furniture dealer of Petersburg, and say that when I dismiss that gentleman from the book, that I have documents which prove him an ingrate, a more or less illiterate person, and a man whose word is worthless—words to the above effect. It is necessary to explain his illiteracy in order to introduce the date of this letter for that is illiterate in itself. He writes like a Tammany ward-heeler, a member of "De Ate," which is Tammanese-bowery for the Eighth Ward. President Habliston, of the National Bank of Virginia, Richmond, used Tammanese brogue in dating his letter, for in an unfortunate hour he ceased to distrust his lack of knowledge of the King's English, and instead of putting the figure "8," he spells it out, thereby cutting his own throat. This is dated "Tuesday, October the eight," and the envelope is addressed to "J. A. Chanler, Esq., Rueger's Hotel, Cit." In a very unbusinesslike way, President Habliston, of the National Bank of Virginia, omits to give the year, but my habits are somewhat more methodical and businesslike, I wrote in blue pencil on the top of the letter, "Answered 10-8-01." The letter is as follows:

"My dear Chanler:

I saw in the paper that you would be in town to attend the Horse Show. I would like to see you while you are in the city and would like to call at some hour—"

(Now here follows another vulgarism in English grammar. President Habliston, of the National Bank of Virginia, Richmond, writes:)

—"that it will be agreeable."

Any common school-child will know that is thoroughly out of place. President Habliston continues:

"If you would enjoy a drive behind a nice pair of horses, I would like to take you out to-morrow afternoon—"

(Here follows another breach of grammar.)

—"at quarter past four o'clock.

"I will be very glad to see you again and add my welcome to that of your many other Virginia friends."

"Yours sincerely,

W. M. HABLISTON."

The illiteracy which rises like a stench from this document, stares from its chirography. It is the uncertain vulgar, loose, badly-formed, clumsy, common hand-writing of a longshoreman or a coalheaver, one whose fingers are more familiar with the handle of a shovel than a pen. I accepted W. M. Habliston's said invitation and drove with him for an hour or so through Richmond and on the environments. During this ride, towards the end of it, I said to him that my trial was coming on in November (next month) and that everything that I was about to say was contingent on my being

found sane—that I was confident of being found sane because I was sane; that if I was found sane, I wanted to know if he would use the voting power of the said "triumvirate," namely, himself, Charles Cohen, the said Jew, already referred to on a previous day in this deposition, and Major T. L. Emry, of Weldon, N. C., and the small stockholders at Petersburg who followed the voting direction of the said "triumvirate," and possibly a few stockholders in Richmond—whether or not he would vote me into the directorate of the Roanoke Rapids Power Co., where I had been before my arrest and incarceration in "Bloomingdale." I knew Habliston's character, his cold-blooded, selfish, treacherous nature, and I knew that gratitude was a stranger to him, and I knew that the only thing that would have any influence with him would be either interest or fear. I had nothing which could excite his interest because I had no money I had been robbed by the laws of New York. I therefore used the only weapon which I had left, namely, fear; and I told Habliston, in effect, I said, "Now, Habliston, you know I have been driving with you for one hour and a half, and we have talked on various topics, and you know I am just as sane as ever I was, as sane as any other man. You know me well as a member of the board of directors, and know my way of talking, that I talk square, as I have always talked. Now, I have been of great assistance to you. I practically made you. You were in a modest business in Petersburg when I elected you—I controlled one-half of the stock of the Roanoke Rapids Power Co. (as before described on a previous day of this deposition)—I elected you president at your intense desire. You wanted to get the social prestige that this would give you, being associated with the Chanler family and their millions. You were correct. You moved from being a Petersburg merchant into Richmond and are now president of a bank for no other reason on earth than that you were president of the Roanoke Rapids Power Company and associated with the Chanlers. That was your "pull." Now I simply ask of you a "quid pro quo." I do not ask you out of friend-

ship or anything else. I ask it out of mere decency that you "make good." My being on the directorate is not going to injure the Chesluro. I am the largest stockholder in the Roanoke Rapids Power Co., and by all business justice I should have business representation on the board. I have been cheated, chiseled, swindled out of my position on the Board by the iniquitous laws of New York State. Now, it rests with you to put me back where I was before I was cheated." Hubbleton said nothing. He looked sullen and mean. He allowed his horse to go at a walk while pondering, monkingly trying to get out of a hole which I was showing him, and which he was near—the hole of decency, of "quid pro quo." I might say that Hubbleton had looked up to me to train him in social ways, to polish him up a bit from an obscurely born forestore dealer to a prospective member of fashionable society in Richmond, to which point he ultimately aspired. He was a pretty tough customer to polish up. His illiteracy of speech was even more marked than his illiteracy of pen, and he had a very unfortunate affliction by way of being unable to control his saliva,—his salivary ducts or glands, I believe they are called in medicine, and his flow of saliva would spatter from his lips as he spoke, and not to put too fine a point on it, he would spit in the face of every man and woman he was talking to; the result of which misfortune is that he is known in politic circles in Richmond as "Spitter Hubbleton." Whenever talking to Hubbleton I edged away from him, and dodged the fountain, and after a year of propinquity with him on the board of directors of the Roanoke Rapids Power Company, I got to be an expert diver. I was sorry for this affliction which Hubbleton had—I was sorry for him, and I was sorry for myself, because I could not dodge all this moisture, but I put up with it because I was sorry for the man, and I knew it was an affliction, and I was always prepared to wash my face and change my clothes after a meeting of the Board of Directors of the Roanoke Rapids Power Co. I charged that up to the commission of business. Hubbleton's

illiteracy had touched me, and his total lack of knowledge of the commonest rules of etiquette, and I set to work to do some missionary work in teaching him how to dress and how to conduct himself like a gentleman. I did this very delicately and at long intervals, so as not to attract his attention, and as not to crowd his memory with social points which he would forget. He was as near grateful for this as his rather contemptible nature admitted of, and got after awhile to look upon me as his social mentor. In fact, one of the last times I saw him in New York before this tempestuous Roanoke Rapids Power Company meeting, as I remember it, in December, 1906, he asked me what sort of gloves to wear with a dress suit, and shoes, etc., and I told him he must not wear russet leather shoes with a dress suit or a red tie, and a few little things like that. A sort of kindergarten that would impress his memory, and that he could recollect—words to that effect. I told him that a white tie was usual with a dress suit and a black tie with a dinner jacket, and patent leather shoes with either. He thanked me profusely and set to work to get the proper "wedding garments," or other attachments, gloves, etc. Remembering this somewhat intimate conversation with President Habliston, of the National Bank of Virginia, Richmond, I felt that it swelled the bill, to a certain extent, of his indebtedness to me for his position in Richmond, financial and social. After a silence of some moments on Habliston's part, I glanced at him and saw this ugly look on his face, and said, in effect: "Now, Habliston, I see that you are rather loath to accede to my proposition, and I shall be frank to say that if you do not accede to it, this is what I am going to do—I am going to give you a write-up, sooner or later. I am what may be known as a "waiter on events"—I await my opportunity, I hide my time, but sooner or later, you can depend upon it, I will write up this incident and publish it and let people know what kind of a proposition you are, how you have rewarded your benefactor." I told him that at one time I could not write, but that I had achieved a pen in "Bloomingdale" and he

would know that in due time, unless he played square with me and restored me to my rightful position in the Roanoke Rapids Power Company. I waited for some four or five minutes for these words to sink in, and they did. At the end of that time, Habliston raised his head and said in a sulky way, "I don't want any trouble with you"—words to that effect—"I will do it; I will vote you in." I told him I was glad of it, that I had spoken to Major Emry on the subject and that he was eager to have me on the Board, and that I knew that Cohen would vote any way he (Habliston) said. I might add that one of the reasons why Cohen followed Habliston so closely was, as I understand, the knowledge and belief that Habliston is a Jew. I understand that Habliston is not his real name; that he had an Italian sounding name, or a Portugese sounding name originally—what it is I have forgotten. He is a Jew and Jews stick together.

To resume—it was then agreed that he was to vote me in at the first opportunity, that is to say, the first opportunity that occurred, provided the conditions which I had named, that I was found sane and competent at my approaching trial at Charlottesville, were fulfilled. The next I heard from Habliston, of the National Bank of Virginia, Richmond, was a letter addressed on the said bank paper to "John Armstrong Chanler, Esq., Cobham, Va. The same lack of business regularity appears in this scrawl of President Habliston's. It bears no sign of a date whatsoever. The first had, "October the eight" but left the year out; this has no date of year or month or even the day of the week. It is postmarked Richmond, however, "Richmond, Va., Dec. 17, 1901, and read as follows:

"The National Bank of Virginia
Richmond, (no date)

"My dear Chanler:

I returned from New York last Saturday. It was the first time I had been to that city since September. I had a conference on last Wednesday with Stanford

White and Winthrop Chanler. They agreed that you should be elected a director at a meeting to be held in January at Roanoke Rapids. I think the day will be the twenty-first. They agreed if they could not be present at that time, to send their proxies so that a quorum could be assured. The day after the courts passed on your case, I wrote Mr. White advocating your election as a director.

"Last week was the first time I was in New York since I seen you. I wish you to know that I had not forgotten your request.

"I would like to see you the first time you are in this city. I think that your affairs in New York can be arranged in a way you might desire." (sic) "I wish in no ways to interfere with your affairs, but if my friendly services can be of any use, I will be glad to be of service.

"With kind regards,

"Yours sincerely,

"W. M. HABLISTON."

The handwriting of this scrawl is, if anything, worse, more shifty, tricky, furtive and vulgar than the preceding scrawl, more difficult to decipher. The illiteracies in it stare from its face. I replied to this briefly, not letting him know that I saw through his trickery in falsely indicating by this letter that my "request" was that Stanford White and Winthrop Astor Chanler were to re-elect me a member of the board of directors of the Roanoke Rapids Power Co., which is the only inference from his letter. He says—

> "I wrote Mr. White, advocating your election as a director. Last week was the first time I was in New York since I *seen* you. I wish you to know that I had not forgotten your request."

I made no request. I had made a demand on Habliston to vote me in by the use of the voting power of himself and

the "triumvirate" aforesaid and the small stockholders who voted with them, and told Habliston that I would show him up in a book if he did not agree to my demand. I made no "request." Furthermore, this demand was for his votes and not for the votes of my private enemies, the perjurer, Winthrop Astor Chanler, and the traitor, Stanford White,—one who had perjured me into a life imprisonment on a perjured charge of lunacy, the other who had lured me from my house in Virginia to New York for that said purpose. It was the last thing in the world that I would have done, to ask a favor of these two scoundrels, and yet President Habliston of the National Bank of Richmond, Virginia, has the face and the falsity to write me that, in his illiterate scrawl of no date, postmarked December 17, 1901, as having made a request to him (Habliston) to "advocate" my election by the good graces of Winthrop Astor Chanler and Stanford White. It is needless to say that at the meeting spoken of by Habliston, to be held in January at Roanoke Rapids—the directors' meeting— it is needless to say that at said meeting I was not elected. I never gave Habliston a line on what I intended to do on account of his treachery. I bided my time. Years rolled by."

By Counsel for Plaintiff: I now file the two letters from W. M. Habliston, just referred to by the witness, and ask that the same be marked for identification and made a part of the evidence in this case.

The said exhibits are marked "Plaintiff's Exhibits No. 119 and No. 120.

(By Counsel for Defendant: We make the same objection.)

Witness continues: In November, 1905, or about the 16th or 17th of November, 1905, Mr. Winthrop Astor Chanler gave a deposition *de bene esse* on the occasion of his trip to

Europe, in evidence in this case. As I remember it—I have not read this deposition for some years—Mr. Winthrop Astor Chanler stated in answer to a question about the Roanoke Rapids Power Co. and the value of its stock, that it was a valuable property and that he was going to increase his holdings therein. This set me to thinking as to how Mr. Winthrop Astor Chanler could increase his holdings, since there were no more than a dozen stockholders of any size, holding any amount of stock, of any size, in the whole company of $200,000 worth of stock. All of the owners of the stock of any size or amount had sufficient other means to hold this Roanoke Rapids Power Company stock as a "long" investment with ultimately very large returns. I was very much interested, therefore, to find out by what means Mr. Winthrop Astor Chanler proposed to increase his holdings, and it suddenly occurred to me that he could not do so to any extent except at my expense, and that meant that I was to be robbed by that due process of law as regards corporations, known as the "freezing-out process. The stock of the Roanoke Rapids Power Co. was *not* non-assessable, and by a motion of the board of directors the stock could be assessed. There was nothing against that in the constitution or by-laws, and I began to take notice, and put myself in a position to know what went on at the directors' meetings in Roanoke Rapids. While I was living at Cobham, Va., I heard rumors, in the early summer of 1905—I heard rumors that there was going to be a "freeze-out" and that a motion was going to be made and passed by the directorate of the Roanoke Rapids Power Company, by which stockholders were to subscribe fifty per cent. of their holdings in a new enterprise at Roanoke Rapids known as the new paper mill, and if they did not put up the money to half of the value of their stock holdings, that they were to surrender their stock holdings for what they gave for them, namely, ten cents on the dollar. As soon as I heard this, I communicated by third parties with Mrs. John J. Chapman, the former Miss Elizabeth Winthrop Chanler, and notified her that I was about to be robbed by

Mr. Winthrop Astor Chanler and Mr. W. M. Habliston, or words to that effect. The president and the secretary of the Roanoke Rapids Power Co., voting together, voting my large holdings—the largest holdings in the Roanoke Rapids Power Co.—with Habliston's holdings was enough to swing the whole company's vote. In fact, voting the Chanler holdings with my holdings, plus one solitary vote, was enough to swing the vote of the whole company. I notified her that if this robbery by Winthrop Astor Chanler and William M. Habliston was not headed off, that I would write it up, publish the book, and show up these manipulations in truthful colors. Mrs. John Jay Chapman at once wrote back to the third party who acted as intermediary between us and gave him the most specious statements regarding what she wanted done in the matter of protecting my stock. All this is fully set forth in the said foreword of "Four Years Behind the Bars" aforesaid, and owing to the new phase of the case, I have not time to go into this as it should be gone into now, and must leave it to my learned counsel to do so. I can only say that after meeting her husband, John Jay Chapman, at the Jefferson Hotel in Richmond, at the meeting already referred to in to-day's deposition, he flatly declined to make good on the propositions which his wife had given me to understand he was interested in making good on, and led me to suppose that this whole thing was a bluff upon the part of Mrs. John Jay Chapman and her husband in order that he might spy on me and hold me in conversation for a period of several hours and satisfy the high-pressure curiosity of the Chanler family regarding my appearance and point of view—they having been without a sight of me since, as regards Winthrop Astor Chanler, the said bellicose directors' meeting of the Roanoke Rapids Power Co. December, 1896, at the Hotel Kensington, New York, and as regards Mrs. John Jay Chapman, her last rather unsisterly interview with me in my cell in "Bloomingdale" in June, 1897. I saw through their game, Chapman's and his wife's, at once, and set to work and wrote "Four Years Behind the Bars of Bloomingdale," and published the same, in

which I set forth at large this attempted deal with my stock —this freezing me out by Winthrop Astor Chanler and William M. Habliston. It made such a stench in the newpapers— the New York World giving it two long interviews, the first interview of a column or more, highly favorable to the book, and the second of a whole broadside or sheet in the Sunday World of November, 1906, as I remember it, headed, "Stop Thief."—this raised such a stench in the press—the New York Tribune, The Richmond Evening Journal, the Raleigh News and Observer, and other papers noticing this book—raised such a stench that the conspirators took fright—the burglars took to flight and dropped the bag containing the "swag," and my stock was saved. And more than that, they were so frightened that actually the Chanlers, some of them, presumably those who were interested in the deal, and owned stock in the Roanoke Rapids Power Co., guaranteed my stock in the new paper mill—without said guarantee Sherman refused to subscribe to the new paper mill, so the Chanlers, to head off the public scandal which I had raised against them actually guaranteed my stock from loss, and it stands to-day in the neighborhood of $17,500 worth of stock, as absolutely sure as United States Government bonds, backed by the Chanler millions.

That was the dominant reason for the publication of "Four Years Behind the Bars of Bloomingdale", as I am at pains to state in the foreword of the same. I express in the foreword my regret to have to write a book about a case which is still *sub judice*, still *lite pendente*, but I had no choice; I was going to lose half of my $350,000 worth of stock, which had been reduced simply to avoid taxation to $35,000, but which was going to be underwritten in 1893, as aforesaid, by a Philadelphia trust company—the Roanoke Rapids Power Company stock was going to be underwritten for two million dollars, when the 1893 panic came on and they dropped out. I was going to be robbed by Winthrop Astor Chanler and William M. Habliston of $175,000 worth of stock at par. In a word, "Four Years Behind the Bars" brought me $175,000

without counting what I made from its sale, and T. T. Sherman claims I am an "incompetent". The next document in this little game of "Freeze out" has to do with a speech which I made at Roanoke Rapids in the fall of 1906, a few days before "Four Years Behind the Bars" was to leave the press of "The Palmetto Press", before the placing on the market of "Four Years Behind the Bars of Bloomingdale"—this speech of mine in the Roanoke Rapids schoolhouse, reported for a column and a half or several columns, as I remember it, in the Richmond Times-Dispatch of the next day, was a curtain-raiser, so to speak, for the appearance before the critics of "Four Years Behind the Bars." The thieves took fright, and William M. Habliston got his lawyer, one, S. S. P. Patteson, of Richmond, to write me the following letter. This letter, which is marked "(3)" is headed:

"S. S. P. Patteson,
"Attorney and Counselor at Law,
"605-606 Mutual Building,
"Richmond, Va.

"October 27th, 1906.

Mr. John Armstrong Chanler,
"Cobham, Virginia.

Dear Sir:

I understand that in a book you are about to publish, you make statements about a friend of mine, Mr. W. M. Habliston, which are not correct and which do him great injustice. At no time has Mr. Habliston proposed any plan to take advantage of a single stockholder in the Roanoke Rapids Company; neither has the company nor its board of directors attempted, or even considered, any plan of assessment. Mr. Habliston suggested a plan in the best faith to the stockholders to develop the company, that was absolutely fair to each of them. He never attempted, in any way, to take advantage of any Petersburg or any other stockholders, nor did he combine with any members of your

family, or any one else, to take the slightest advantage of any interest, and any stockholder who did not consent, simply had to refuse, and in that case the stockholder took advantage of the developments being made by others to improve his holdings, without making any contribution whatever.

"I enclose you a copy of letter from Mr. Hablis-ton to Mr. T. T. Sherman, which is absolutely equable and fair. The property at Roanoke Rapids had to be either put in good shape and condition for further development or it would deteriorate, with the possibility of the dams rotting and breaking.

"I write this letter in order to give you an opportunity to correct these serious errors. Mr. Charles Cohen not only did not attempt to acquire additional stock, but he sold over 600 shares of his individual holdings to place the proceeds in stock of the paper mill to help to increase the value of the remaining holdings.

"Believing that you would not knowingly do any one any injustice, I write to ask you to make the proper corrections at once.

"Each statement made by me can readily be substantiated.

"Requesting your prompt attention, I am,

"Very truly yours,

(Signed) S. S. P. PATTESON."

This letter I answered by wire, a night message, which I had what is known technically as "repeated back", dated 10-30-06, 9:6 P. M. as follows:

"S. S. P. Patteson, Mutual Building, Richmond, Va.:

In answer yours twenty seventh with four questions and answers: Was there until recently a Petersburg group of small holders of Roanoke Rapids Power Stock? Yes. Does said group now exist? No. Who owns said group's stock? William M. Habliston. Who

endorsed scheme by which said group had to put up or lose half its stock? William M. Habliston."

The original held, John Armstrong Chanler.

The "copy of letter" from Habliston to T. T. Sherman, enclosed by Mr. Patteson in said letter of October 27, 1906, I have marked "(No. 3')". It reads as follows:

"Richmond, Va., Nov. 14, 1905.

"Mr. Thos. T. Sherman,
Care Evarts, Tracy & Sherman,
60 Wall St., New York.

"Dear Sir:

The capital stock of the Roanoke Rapids Power Company is $200,000 fully paid. To develop the property of the company, I desire the owners of the property (the stockholders) to put up an amount equal to the par value of the stock, $200,000. $100,000 of the amount to be expended in putting the present canal and dams and other works in condition to comply with contracts already made and in the erection of a power-house and installation of a plant for the delivery of 1000 horse power electrically. The other $100,000 to be used in subscription to cotton mills or factories that will use not less than 500 horse-power of power of the electrically developed power.

"The contracts for power, for 100 years each, were closed within the last year, which pay annual rents of $2,750 each, total $5,500.

"5 per cent. bonds to be issued on the Power Plant for the $100,000 expended in improvements to the canal and in the erection and equipment of power plant.

"Stocks to be issued pro rata to each subscriber for $100,000, as utilized in subscriptions to cotton mills or factories.

"The property of the Roanoke Rapids Power Com-

pany is a valuable one if the owners will put the company in shape to sell power, and will furnish a fund to subscribe to cotton mills or factories that will utilize not less than 500 horse-power of the electrically developed power.

"No subscription to be made to any mill without the approval of the board of directors.

"The prospects are, I think, that the $100,000 fund will enable us to secure the location of mills or factories of sufficient size to utilize the 1000 horse-power electrically delivered. I estimate the revenue at not less than $18 per horse-power, and I think $20 should be the price.

"Take the lowest price and the minimum power, the $100,000 fund will give our company an additional revenue of $9,000 gross per annum and at least one additional mill and in addition, the improvements to the property resulting from its erection.

"Unless the $100,000 fund for mills is invested within three years, the amount is to be returned to the subscribers.

"The stockholders who are unable to furnish an amount equal to the par value of their stock, to sell one-half of their stock at $10 per share, the proceeds to be part of the $200,000 fund. The other half of stock to be sold to some one who will put up to the par value of the stock for the purposes named.

"To illustrate the plan, will take a $20,000 interest in the company. 1st: Party putting up to the par value of the stock will continue to hold the $20,000 stock in the Roanoke Rapids Power Company, and have for his additional $20,000:

$10,000 5 per cent. Bonds on Power Plant.

$10,000 stock in cotton mills or factories.

Second: Party selling half interest, instead of $20,000 of Roanoke Rapids Power Co. stock, will then have:

$10,000 stock of Roanoke Rapids Power Co.
5,000 5 per cent. First Mortgage Bonds on Power Plant.
5,000 stock in cotton mills or factories.

"Subscriptions to be made only on condition that subscription to the entire fund of $200 000 is secured. 25 per cent. of each subscription to be paid in cash, the balance to be called for as needed, part for improvements and construction of power plant, and part as needed for the erection and equipment of cotton mills or factories.

"Very truly yours,
"(Signed) W. M. HABLISTON.

"P. S.

"Any portion of the $100,000 for the development of cotton mills to be used, provided it secured utilization of power in proportion as 500 h. p. is to the whole. The unused portion at the end of three years to be cancelled or returned."

"W. M. H."

One sentence in that said letter to Sherman proves the "freeze-out"—proves the truth of my accusations, namely:

"The stockholders who are unable to furnish an amount equal to the par value of their stock, to sell one-half of their stock at $10 per share, the proceeds to be part of the $200,000 fund. The other half of the stock to be sold to some one who will put up to the par value of the stock for the purposes named."

In the said telegram where I say: "Who owns said group's stock? William M. Habliston."—I write as a lawyer in controversy with another lawyer on the opposite side of the same question. When I said "owns", I meant, of course, the equivalent of "owns", namely, "controls", so that the said stock had gone where Mr. William M. Habliston wanted it

to go, namely, out of the pockets of said group and into the pockets of Habliston or parties unknown whom Habliston favored presumably, and I have heard that this was the destination of a considerable portion—into the pockets of the Richmond broker who floated a $100,000 loan to the Roanoke Rapids Power Co., as a bonus for floating said loan.

By Counsel for Plaintiff: I now file the letters marked "(3)" and "(3')," respectively, and the copy of the telegram, marked "(3')," referred to by the witness, and ask that the same be marked for identification and made a part of the evidence in this case.

The said exhibits are marked "Plaintiff's Exhibits No. 121, No. 121-a and No. 121-b.

(By Counsel for Defendant: The same objection.)

Witness continues: The last document in this four is a letter—a brief note to me from Mr. S. S. P. Patteson, dated October 31st, 1908, in reply to my telegram, which is as follows:

"John Armstrong Chanler, Esq., (sic)
"Cobham, Va.

Dear Sir:

Your telegram of October 30th was received by me this morning.

"No stockholders in Petersburg, or elsewhere, were forced to sell their stock, or any single share. You are absolutely mistaken in your idea that Mr. Wm. M. Habliston has, in any way, been unfair or unjust to any stockholder. A careful investigation will convince any one that such is the fact. I therefore insist that all statements reflecting on Mr. Wm. M. Habliston be at once stricken out of your forthcoming book.

"Very truly yours,
(Signed) S. S. P. PATTESON."

To which I replied: I made a private note at the time, "Demurrage entered". That note was made at eight minutes past two. At ten minutes past two, I wrote the following wire and wired this at once to Double O, Double P, the envelopes I had given him. Of course, it was addressed to O. O. P. that I have read signed *John Armstrong Chamberlain*, abbreviated in the note to "Gen. Arm. Cham." as usual. My note reads:

"2:10 P. M. 12-5-08.
"Wired at once to Double O, Double P.
"Twelve thirty-four received. Two weeks are ended.
Gen. Arm. Cham."

(By Counsel for Defendants: The same objection.)

By Counsel for Plaintiff: I now file the letter and copy of telegram just referred to by the witness, and ask that the same be marked for identification and made a part of the evidence in this case.

Said Exhibits are marked, "Plaintiff's Exhibits No. 130 and No. 130-a.

(By Counsel for Defendants: The same objection.)

[illegible]

By Counsel for Plaintiff:

Q. Mr. Chairman, your brother, Winthrop Astor Chanler, testified on page 16 of his deposition that a man by the name of Shattuck wrote letters to your said brother that you were in a very bad condition of health; that Shattuck caused some one to come down and attend to you, that he would no longer be responsible for you. Who was Shattuck?

A. He was my valet. He was on an plantation, so to speak, on my place "Clipperdy", on which his parents lived. His father was a farm-hand on "Clipperdy", the Chanler home

stead at Barrytown on Hudson and I took him as a boy off the farm and had him trained as a valet, and later on, enough to typewrite letters, but he was utterly uneducated and illiterate, and never could spell without the aid of a dictionary, and was never anything above the level of a valet who could use a typewriter; he was never anything of a secretary.

Q. Up to what time did Hartnett continue in your employ?

A. Up to the time that I was lured to New York by Stanford White, whereupon, upon my being taken to "Bloomingdale", thereafter the said Hartnett at once entered the service of Stanford White.

Q. What reason, if any, could you assign for Hartnett to write any letters to your relatives?

A. He had gone over to the other side. He joined Stanford White, as I have just said, and before that he had been impertinent to me and I had threatened to discharge him, a few weeks before the 13th of February, 1897, and he showed he was in the interest of the other side as he communicated with Stanford White without notifying me, and showed Stanford White up the back stairs, he and Dr. Fuller, at "The Merry Mills" on the 13th of February, 1897, so that they came in unawares to me, never rung the bell, I never knew they were in the country, they came up the back stairs, let in by Hartnett, and came in tip-toe up the back stairs, and walked in on me, to my rather natural surprise, not hearing the door-bell ring or receiving a line or hint of their approaching visit.

Q. When had this impertinence of Hartnett shown itself, Mr. Chalmer?

(By Counsel for Defendant: We object to this as irrelevant.)

A. A few weeks before the 13th of February, 1897. I was not keeping my diary at that time—I was not writing a line, I was resting absolutely from anything approaching

writing, writing letters or any other writing, and for that reason I do not know the date, but it was a few weeks before that, it was between Christmas Eve, 1896, and the 13th of February, 1897, presumably about the middle of January or so.

Q. That was a few weeks before Stanford White came down from New York, was it not?

A. It was; he came down about the 13th of February, 1897, on which is assumed that the impertinence took place about the 15th of January there or thereabouts.

Q. What became of Hartnett after he left your employ?

(By Counsel for Defendant: The same objection.)

A. He went into the service of Stanford White, and stayed there until Stanford White's death.

* * * * * * * *

Q. Mr. Chaloner, your brother, on page 75, states that your former valet, Hartnett, was in your employment while you were incarcerated at "Bloomingdale." What have you to say regarding that?

(By Counsel for Defendant: Same objection.)

A. It is unqualifiedly false. I have a letter from Hartnett postmarked "Madison Square, New York, November 9th, 1900, and received by me on or about that time while I was in "Bloomingdale," which is enclosed in an envelope bearing the printed address of "McKim, Mead & White, 160 Fifth Avenue, New York, Box 175," and the letter is signed by Hartnett.

(By Counsel for Defendant: So much of the said answer as relates to any letter is objected to as clearly improper unless the letter relates to the testimony, and also the letter is not produced.)

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Pages 442 to 446 omitted.

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Pages 442 to 446 omitted.

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LETTERS re NOTICE GIVEN OTHER SIDE OF 1901 PROCEEDINGS, 847-852.

By Counsel for Plaintiff: Mr. Chaloner, I hand you a couple of letters enclosed in an envelope—will you please describe them?

(By Counsel for Defendant: We make the same objection to comment on these letters and their introduction, as not being shown to be material to this issue.)

A. This letter is marked in blue pencil by me, "9-27-04", and has in blue pencil, "Re Hon. John B. Moon, representing the other side in the November 6, 1901, proceedings." It is addressed to me in the handwriting of the Hon. Armistead C. Gordon, then of counsel for me in the 1901 proceedings aforesaid, and is addressed "John Armstrong Chanler, Esq., Cobham, Albemarle Co., Va.", and postmarked "Staunton. Sept. 27, or 27, ("September" is hardly legible), 1904; and the letter is dated Sept. 27, 1904, Staunton, Va., and reads as follows:

"John Armstrong Chanler, Esq.,
"Cobham, Va.

My Dear Mr. Chanler: I wrote you on the 23rd inst. "I have just received the enclosed letter from Mr. Harper. With it I hand you copy of mine to him. Capt. Woods, to whom I wrote on same case as to Mr. Harper, has not yet replied.

"Please pardon my slowness. I have been unusually busy.

"Sincerely your friend,
"Armistead C. Gordon."

Here follows the enclosed copy referred to by the said Hon. Armistead C. Gordon, of his letter to Fred Harper, a partner of the late Jno. W. Daniel, United States Senator

from Virginia. It is dated Sept. 23, 1904, and has at the top "Copy."

"Fred Harper, Esq.,
Lynchburg, Va.

"Dear Mr. Harper:

In a recent letter from Mr. John Armstrong Chanler, whose case against Mr. T. T. Sherman as Committee is now pending in the Circuit Court for the Southern District of New York, he requests me to ascertain from you:

"1. From whom did the knowledge of the request of Mr. Chanler's New York Committee, or of his brothers that the hearing on his sanity before the Albemarle Court, be postponed, come to you?

"2. From whom did the proposition that he should go north in person to meet 'the other side', come to you; and upon whose authority was this proposition made?

"In reply to these questions from Mr. Chanler, I wrote him a short time ago that my recollection was that the request for an adjournment of the hearing in Charlottesville, came to me through Capt. Woods from Mr. John B. Moon, as counsel for and on behalf of 'the other side'—either the then Committee, Mr. P. H. Butler, or Mr. Chanler's brothers; and that it was Judge Van Wyck's proposition through you that Mr. Chanler should go north.

"Mr. Chanler wishes especially to know now from you if I am correct as to the last named statement, and if so, what was the date of Judge Van Wyck's letter, and how soon thereafter were Messrs. Evarts, Tracy & Sherman informed that Judge Van Wyck's proposition was declined by Mr. Chanler's attorneys in Virginia. You can doubtless get all this from your files.

"I will forward your reply when received to Mr. Chanler.

"With kind regards for yourself and for Major Daniel, I am,

"Very truly yours,"

Attached is the original letter from Mr. Fred Harper, of Daniel and Harper, to Hon. A. C. Gordon, which has as its heading—

"Jno. W. Daniel. Fred Harper. Daniel & Harper, Attorneys at Law Lynchburg, Va."

and is dated Sept. 24th, 1904, and reads as follows:

"Hon. A. C. Gordon,
Staunton, Va.

"My Dear Mr. Gordon:

Replying to your favor of the 23rd instant, I beg to say that an examination of our files discloses the fact that continuance of the proceedings in Charlottesville were had at the suggestion of Mr. Moon, representing Mr. Butler. The reason of Mr. Moon's request was that Mr. Chanler's family desired an opportunity to be present at the hearing.

"As to the second matter, a letter from Judge Van Wyck to us under date of November 2rd, 1901, contained the suggestion that Mr. Chanler go to Philadelphia to submit to an examination for the satisfaction of his family. This proposition was made to Judge Van Wyck by Mr. Evarts, representing the family. In a letter which we wrote to Judge Van Wyck under date of November 4th, 1901, we advised him that we thought the suggestion 'unreasonable'. So far as our files show, that was the last said in correspondence about Mr. Chanler's proceeding north for an examination by physicians chosen by his family. Trusting that this information will be satisfactory to you.

"Major Daniel is in the office and joins me in best wishes to you. I am,

"Very truly yours,
(Signed) FRED HARPER."

These letters shed interesting light on the falsity of the claim of Mr. T. T. Sherman, set forth in his answer to my summons as complainant in this case, that his side received no notice, implying that his side knew nothing whatever about the trial of me in open court November 6, 1901, as a result of the proceedings brought by Cary Ruffin Randolph to ascertain whether I needed a committee of my person and estate, I being accused by Butler and Sherman, as committees, of being an alleged lunatic. Sherman was not then committee, but Butler was, when these proceedings were brought. The truth of this is further borne out by a statement of my counsel, Capt. Micajah Woods, of record in the 1901 proceedings in Charlottesville, to the Court, the truth of which statement the Court acquiesced in by not correcting Capt. Woods in the statement. He says, in effect, in opening the proceedings in 1901, in explaining why the case was not brought in the October term of the Court as was originally intended—he says, in effect, (I quote from memory, subject to the record in "Chaloner vs. Sherman" on file in this case a certified copy thereof being exhibited in this case, besides a copy thereof being in the Brief and Appendix in "Chaloner vs. Sherman" —Capt. Woods says in effect, "Your Honor will remember that this case was to have come on at the October term of the Court, but, owing to the objections by Mr. Jno. B. Moon, representing the other side, it was continued to this term of the court in order to give the brothers of Mr. John Armstrong Chaloner an opportunity to be present." Furthermore in the proceedings in 1908, when Capt. Micajah Woods was on the stand, he was questioned by one of my counsel regarding the matter, and the 1908 deposition in Chaloner vs. Sherman shows that the Hon. John B. Moon represented the other side in 1901. He took no part in the proceedings. Furthermore, the document which I shall show later, put in evidence—exemplified copy of what was known in this case as the "Louisa proceedings", certified for service outside the State, according to the Federal statute, show that the Hon. John B. Moon was present at Louisa in the proceedings had there Sept. 20,

1901, concerning property of mine which the Hon. John B. Moon was attempting to get out of the State and into the hands of Prescott Hall Butler. My counsel—Messrs. Micajah Woods and Armistead C. Gordon, of my counsel, appeared and explained the situation to the Court, and continued the case until my sanity should be ascertained by the then pending Albemarle County proceedings aforesaid. Hon. John B. Moon is mentioned in these proceedings specifically as in the employ —words to that effect—of Prescott Hall Butler; and in the teeth of that, in the teeth of the fact that John B. Moon, who was Butler's counsel, was present at the court proceedings in Louisa September, 1901, at which my approaching trial was mentioned and given as a reason for continuing the proceedings at which the Hon. John B. Moon was then present in Louisa—in the teeth of that, Evarts, Tracy & Sherman in their brief, claim that they got no notice, and imply that they knew nothing of the proceedings to declare me sane or insane, as the facts might develop.

By Counsel of Plaintiff: We now file the letters which have just been referred to by the witness, and ask that they be marked for identification and made a part of the evidence in this case.

The said exhibits are marked "Plaintiff's Exhibits No. 111, No. 112 and No. 113."

(By Counsel for Defendant: We object to the introduction of these letters as irrelevant to these issues, as heretofore stated, and we further object to the introduction of a copy or a purported copy of a letter unsigned, and addressed to Fred Harper, Esq., Lynchburg, Va., under date of Sept. 23, 1904, the said copy bearing this date, for the reason that this is a copy and not the original, and therefore not the best evidence.

By Counsel for Plaintiff:

Q. Mr. Chaloner, I will ask you this question: Is the

Hon. John B. Moon, to whom you have just referred, the same party who now appears for the defendant in the case of John Armstrong Chanler vs. Thomas T. Sherman?

A. He is the identical gentleman.

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Pages 452 to 455 omitted.

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Pages 452 to 455 omitted.

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PHILIP, H. V. N., ENGAGED TO GET COUNSEL FOR PLAINTIFF, 869-871.

By Counsel for Plaintiff: Q. Mr. Chaloner, have you any receipts or memoranda from H. V. N. Philip in connection with the employment of counsel to represent you while you were in "Bloomingdale."?

(By Counsel for Defendant: The same objection.)

A. I have.

By Counsel for Plaintiff: Q. Mr. Chaloner, I hand you an envelope marked "Receipts from H. V. N. P." and also marked "John Chilton, Esq., City." Do you identify these as the receipts or memoranda to which you have just referred?

(By Counsel for Defendant: The same objection.)

A. I do. It contains two receipts in pencil in the handwriting of and signed by H. V. N. Philip, both of the same date; although one is dated, they were both written at the same time and are in the same envelope. The first bears date "May 13, 1899," and reads:

> "Received from J. A. Chanler order to show cause and affidavits in matter of appointment of committee to be held for further instructions from said Chanler, or his counsel, M. Woods."

"M" stands for Micajah, the late Captain Micajah Woods. The second receipt reads, over the signature of H. V. N. Philip:

> "I have telegraphed to M. Woods that proceedings have been brought by J. A. Chanler's family, returnable May 19th. I also have said Chanler's letter of instructions to his counsel, said Woods."
>
> (Signed) H. V. N. Philip.

(By Counsel for Defendant: The same objection.)

By Counsel for Plaintiff: We now file the receipts or memoranda from H. V. N. Philip, just referred to by the witness, and ask that the same be marked for identification and made a part of the evidence in this case.

The said exhibits are marked "Plaintiff's Exhibits No. 117 and No. 117½."

(By Counsel for Defendant: The same objection.)

By Counsel for Plaintiff: Q. Mr. Chaloner, do you know whether or not Mr. H. V. N. Philip actually did telegraph to the late Captain Micajah Woods and carry out your instructions as he said he had done?

(By Counsel for Defendant: The same objection.)

A. I do not know; I only ran across these receipts, as the note made by me on the envelope containing them indicates, the 1st of October of this year. I had forgotten about them and for that reason it escaped me to ask Captain Woods during these years whether he had ever been communicated with by Philip for this purpose. That was the reason why I never asked Captain Woods—I had forgotten the incident of these receipts entirely among the multitudinous documents which this record shows I had kept in my mind. This is one that did escape my mind for the reason that I had it on

paper and for the reason, as aforesaid, that when I have put a thing on paper, I dismiss it from the first line of my advance—so to speak (I flag the Docs), and on account of the small size of this envelope, it was lost "in the rush" until last October, among the various, multitudinous exhibits in this case, nearly all of which are far larger in size than this envelope, which crowded it into a corner of my safe presumably, so that I did not see it during all these years until last October.

(By Counsel for Defendant: The same objection.)

* * * * * * * * * * *

PLAINTIFF'S CORRESPONDENCE WITH T. J. MILLER re DELOS McCURDY, 1082-1099.

A. This old friend I wrote to was the late Thomas Jefferson Miller, of the Manhattan Club, Madison Square, New York, of which we were both members. The Manhattan Club was in Madison Square when I last belonged to it. I have since resigned and do not know where it is located now. It might not be there now for all I know. He was one of the oldest members of the Club, and one of the most respected, and frequently sat on commissions in lunacy. He was a layman, and had been in the Confederate Navy, but he was an extremely honorable man and a wise man. He was so honorable—so proverbially honorable, that I happened to mention his name to Dr. Austin Flint on one of his visits aforesaid to me at "Bloomingdale"—Dr. Flint being a member of the Manhattan Club—Dr. Austin Flint—and he said these very words—blurted it right out, "He tells the truth." He stated this as though it was a remarkable characteristic of Mr. Miller's, and made him a sort of "rara avis," or rare bird, in New York, in the Manhattan Club at all events. It struck me as a notable characteristic that upon my mentioning Mr. Miller, the very first comment he made of him was "He tells the truth." Dr. Flint knew this because he had frequently been before Mr. Miller when Mr. Miller sat

as a lay member of a commission in lunacy, which in New York consists of an alienist, a lawyer, and a layman. I have here six letters addressed to me by the late Thomas Jefferson Miller, to Mr. James Chilworth, Valhalla, Westchester Co., New York; the first designated as "(1)", postmarked New York, May 31, 1900; the second designated as "(1-a)", postmarked Marlowe Sq. Sta., N. Y., October 30, 1900; the third designated "(1-b)", postmarked Marlowe Sq. Sta., N. Y., Oct. 31, 1900; the next designated "(1-c)", postmarked Marlowe Sq. Sta., November 5, 1900; the next designated "(1-d)," postmarked Marlowe Sq. Sta. N. Y., Nov. 7, 1900; which were all I received from him while in "Bloomingdale." The next and last is designated as "(1-e)", postmarked Marlowe Sq. Sta., Sept. 25, 1901, and is addressed to me in the same handwriting as John Armstrong Chanler, Esq., Castle Ivan, Albemarle Co., Va. All these letters bear the seal of the Manhattan Club in wax, either a dark green or red, two of them red wax, still four dark green. The seal is an M. and C.—a cog 'tel M and a capital C—intertwined; that is the seal of the Manhattan Club. This address of the envelope in the same handwriting clinches my claim that James Chilworth and John Armstrong Chanler were the same party. It is written in the same handwriting. Furthermore, it endorses the fact that, as I say, he belonged to the Manhattan Club; also the letter designated "(1-c)" is written on Manhattan Club paper, dated October 30, 1900, and they all begin "My dear Archie"—they do not begin "My dear Jim," which would be the natural diminutive of James Chilworth. "(1-d)" is also on Manhattan Club paper; and "(1-e)" also. "(1-e)", the last letter he wrote me, dated New York, September 25th, is, like the first letter he wrote me, designated as "(1)", and is on plain paper, and has at the end of the letter "J. Armstrong Chanler, Esq.," as also has the envelope, but the envelope of the first and last letter both contain the Manhattan Club seal—an intertwined "M" and "C." These letters I now read.

(1)

"May 30, 1[illegible]

"My Dear Archie,

"I've received [illegible] of the 24th ult., [illegible] duly rec'd.

"I cheerfully accept the proposition in [illegible] words, and shall devote myself to them fulfillment as shall [illegible] be deemed advisable from time to time as circumstances [illegible].

"Nothing can be accomplished by undue haste. Everything by patience and industry. Those with whom I am to confer and correspond, are fully alive to the circumstances, and confident upon that.

"I have never failed you heretofore, and shall not now.

"Every kind and generous offer in my behalf is most gratefully received.

"Be of good cheer, and believe nothing will be neglected toward the end in view.

"Ever [illegible],

(Signed) [illegible]."

(2)

"Confidential.

[illegible] 30, 1[illegible]
[illegible] City,
[illegible] Square,

"My Dear Archie:

"Permit me to answer your letter of the 24th personally, without [illegible] any question.

"I do not learn, for a fact, whether [illegible] have, or has not, [illegible] your case. But ignoring it, I do not see how I could have [illegible] you objection on the [illegible]. I had [illegible] from your letters that he had, and in my conversations with him since that time looked upon him as your [illegible]. I [illegible] your proposition, and have ever since [illegible] up to a fortnight[illegible]. On [illegible] pilgrimage, [illegible] approaching a

period of seventy-six years, I have never been accused of duplicity; and it is an insult to me, which I spurn, and resent, that I am '*evidently acting under orders, most probably McCurdy's.*'

"For weeks, I have not seen that gentleman, and all efforts to have a talk with him in your behalf, and for your interests, and your's alone, have been fruitless and of no avail!

"I now relinquish and withdraw from your stipulations.

"Under the stigma you have been willing to pronounce, you can readily see how inopportune any efforts of mine in your behalf would prove. It is better for both of us that it should be so!

(Signed) THOS. J. MILLER."

(3)

Wednesday, 31st Oct., 1900.
Manhattan Club,
Madison Square.

"My Dear Archie:

"It is all right, old fellow, and we go on again one more, all the better for the dark clouds which came near obscuring our horizon—But it hurt me much, all the same, while the squall lasted; for I am unused now-a-days ever to be upon the defensive, particularly from one who has shown so much of my affection these many years past, as you have done.

"Again I have to report, I have not seen nor heard from our friend, McCurdy. It seems incredible to me. You are sure, are you, that you have not written anything he might have taken exceptions to? In that, I take it, he is punctilious to a degree? But this is all at random, as though in a fog. I cannot write at any length to-night;

"I suffer so much, at times, from cramp of the fingers, "pen paralysis," and this is one of my bad spells

"I hope you destroy my letters after reading them! It would not do for others' reading. Give me always two or three days' notice so I can write in time not to disappoint you at p. o.

"Once more, and again, my dear Archie, believe me, most affectionately and faithfully,

"Your friend

"THOS. J. MILLER."

(4)

"November 4, 1900.
Manhattan Club,
Fifth Avenue.

"My Dear Archie:

"Impossible to write until after election. At no time did the distinguished counsel ever say, or intimate, he had rec'd a letter from you. The query was wholly mine reaching out entirely through a maze of ignorance to arriving at a conclusion. I hope Wednesday to write you again. Till then, and always, affectionately and faithfully,

"Yours,
(Signed) THOS. J. MILLER."

(5)

Wednesday, 7th November.
Manhattan Club,
Fifth Avenue.

"My Dear Archie:

"I wrote briefly Sunday evening, the earliest possible time I had at my command, acknowledging yours of the 1st ult. Never expect answers by "return mail" in my present state of physical uncertainty as made known to you several days ago. At a second's warning, my fingers become rigid with the most painful tension, rendering me powerless, for the time being, until the sinews

relax, and I can hasten to apply hot water, which, in a little while, becomes efficacious; but impairing my usefulness for hours after.

"It is well for you to remember this, if disappointed at any time after your journey or walk for my response—during the excitement of the campaign just closed (after administering an antidote to Bryan, which will henceforth keep him quiet for years to come), this Club has been anything but quiet, or a place for meditation of any kind.

"Always most cordially and faithfully, my dear Archie,

"Yours,
(Signed) THOS. J. MILLER."

(6)

"New York, Sept. 24th.

"My Dear Archie:

"Your esteemed favor came duly to hand, and gave me great pleasure in its thoroughly lucid perusal.

"I only wish it were in my power to reciprocate, and carry out your ideas as expressed, but, dear friend, I grieve to say, I am not equal to the task. My seventy-six years have aged me considerably, and taken most of the snap out of me, so much so that, outside the few commissions on which I sit from time to time, the Club alone is my refuge and solace. I rarely, if ever, go down town; and walk, in the afternoons through the Square to the Club-house, dine, spend the evening, and return to my quarters. Visiting, theatres, &c., &c., are all dispensed with, virtually shelving me into almost absolute retirement. Added to my discomfort, I am seized with cramps from time to time, and suffer until the spasm is over. Thus you see, dear Archie, how unfitted I am to be relied upon in any special emergency. I hope you will not refuse me your kind consideration.

"Believe me, my dear Archie, as ever most faithfully and truly,

"Your friend
(Signed) THOS. J. MILLER."

"J. Armstrong Chanler, Esq."

Mr. Thomas Jefferson Miller was not a rich man by any means—in fact, his means were extremely slender. He was a poor man, and one of the regrets in this case is that I was not able to make his declining years happy for him by giving him a modest pension of fifty dollars a month, which I offered to do. I did not have the money to do it at the time, and he died before I did. He died in almost straightened circumstances. In fact, one of the members of the Manhattan Club (I frankly say that I am astonished that the Manhattan Club would have such a member), Col. W. D. Mann, the editor and proprietor of "Town Topics"—on Thomas Jefferson Miller's death, Mann wrote a very nice paragraph or so in his publication aforesaid, praising Mr. Thomas Jefferson Miller, and saying what a loss he was to the Club; that he was a charming, cultured, brilliant man; that he was universally beloved, and said, "Just think of it! he was so poor, he almost starved to death!" I had no idea that he almost starved to death and do not believe that, but knowing his straitened circumstances, I was most anxious to relieve them by giving him what would be to him independence with his simple wants, fifty dollars a month at the start, which I intended, of course, to increase when I got my property. I wrote him a letter on May 24th, 1900. He is described as "an old friend of Plaintiff's in "Four Years Behind the Bars," page 40. In this letter, I offered him—I have not got a copy of it, it has been lost in the rush—"in the dark, backward abyss of time" between when it was written and to-day, to quote Shakspeare—I offered Mr. Miller fifty dollars a month if he would use his good offices to watch Delos McCurdy and see how he was taking care of the case and that he *was* taking care of the case. I knew nothing of Delos

McCurdy—McCurdy's private character. I knew that he was outwardly respectable, highly so, and that he had high standing at the New York bar, but whether he was an honorable man or not I did not know. I found, to my disgust, that he was very far from an honorable man. In reply to my first letter ,I received this letter designated "(7)", dated May 30, 1900, in which he says, as follows:

"May 30, 1900.

"My Dear Archie:

"Your esteemed favor of the 24th ulto. was duly rec'd.

"I cheerfully accept the propositions so kindly made, and shall devote myself to their fulfillment as shall best be deemed advisable from time to time as events may be developed.

"Nothing can be accomplished by undue haste. Everything by patience and serenity. Those with whom I am to confer and advise, are fully alive to the situation, rest confident upon that.

"I have never failed you heretofore, and shall not now.

"Your kind and generous offer in my behalf is most gratefully received.

"Be of good cheer, and believe nothing will be neglected toward the end in view.

"Your friend

(Signed) THOS. J. MILLER."

To this note I replied with the letter in blue pencil, enclosed in this letter designated as "(7)". My letter reads as follows:

"Confidential.

"Copy. "White Plains, New York,
"June 1st, 1900.

"Hon. Thomas Jefferson Miller,
Manhattan Club, Madison Square,
New York City.

"My Dear Uncle Tom:"—

(I will say here that he was universally known in the club by everybody as "Uncle Tom." That affectionate term was given to him by everybody that knew him.)

"Your pregnant note of May 30th last, was gratefully received by me to-day. I rest.

"Your affectionate friend,
"JOHN ARMSTRONG CHANLER."

(I used the phrase "I rest" in the legal sense—in the sense that the prosecution rests.) I felt that Mr. Miller, who was almost a lawyer,—from his close relationship with the Judges of the New York Supreme Court, all the Democratic members of whom, practically all, belong to the Manhattan Club—knew law extremely well, and also from having served on so many commissions, and he would know what I meant when I said "I rest." In my letter to Mr. Miller, who is known on pages 40, 41, etc., of "Four Years Behind the Bars" as "said friend"—in my note of May 24th, I propose to Mr. Miller to call on Delos McCurdy, the said "second New York Lawyer," and use his good offices to get McCurdy to bring my case to court as quickly as possible. I was under the impression at that time that McCurdy was at work on my case. I got that impression from the letter the said Geo. H. Barnes had written me, now in evidence, stating that he had seen McCurdy and that McCurdy had said he would give the matter his attention. I, of course, thought that McCurdy was going to take the case, or else he would let me know to the contrary; therefore, since Mr. Miller was in a position to assure himself as to whether McCurdy had taken my case or not, in writing to Mr. Miller in my said letter of the 24th of

May, 1900, I spoke of Delos McCurdy having taken my case as an accomplished fact, based on what Mr. George H. Barnes had said, supplemented by the fact, as aforesaid, that Mr. Thomas Jefferson Miller could not be deceived by my statement because he could set himself right there anent by asking Delos McCurdy, or in conversation with him, so I stated that he had taken my case—words to that effect. I said "Delos McCurdy has taken my case." On receipt of Mr. Miller's letter of May 30th, 1900, I naturally inferred from it that I was right in assuming that McCurdy had taken the case. His words were "those with whom I am to confer and advise are fully alive to the situation. Rest confident upon that." I inferred from that that he knew they were alive to the situation from their having told him so. I therefore inferred that McCurdy was diligently working upon my case. Weeks rolled by and I heard nothing, and hearing nothing from McCurdy or from Mr. Miller, I then wrote direct to Delos McCurdy, as described in the said pages of "Four Years Behind the Bars," as said "second New York lawyer," a brief, polite note, asking him point blank, but politely, whether or [illegible] was at work on my case. Here is the note. I am in the extraordinary position to be able to read the original of this letter which I wrote to Delos McCurdy from Hartsdale, N. Y.—Hartsdale is some four miles down the track; I "mounted ties" to get there. I walked down the railroad track. It is between New York and White Plains; it is a station on the railroad. This letter is dated July 18, 1900. I will draw attention to the remarkable fact that this letter was written to a man as treacherous, as cold-blooded, as thoroughly villainous as McCurdy! This letter is postmarked Hartsdale, N. Y.; then it has another postmark, "White Plains, N. Y.," with the date obliterated, "8 P. M. 1900 Rec'd." Then another postmark: "T. 7-19-1900, 8-1A, N. Y."—a mysterious postoffice mark, apparently. This is addressed to Delos McCurdy, care McCurdy & Yard, 66 Broadway, New York City, and has "Personal" on the left-hand top corner. That I could get this letter out of the

hands of a man as crafty and cold-blooded as Delos McCurdy has proven himself in this case, is no light task. I frankly admit that I used strategy to obtain this letter, to make Delos McCurdy disgorge. I wanted the evidence against him; I wanted to show him up, as I want to show up everybody who has injured me, directly or indirectly, in this crime of "Bloomingdale" and all that it implies. I did not get this letter until a year after it was written. How I got it I need not state. I will merely say that I did not steal it; I did not rob McCurdy, but here is the letter, marked "(7)"—Hartsdale, N. Y." I now read the letter:

"Hartsdale, N. Y.
"July 18, 1900.

"Delos McCurdy, Esq.,
66 Broadway, New York.

"Dear Sir:—

"My case was brought to you by Mr. George H. Barnes, of the American Lithographic Co., and Mr. Thos. J. Miller, of the Manhattan Club, saw you thereon subsequently. I walked here to-day, called you up on the 'phone. I was told you would be in to-morrow. I write to ask you to have the goodness to write me a note answering the following questions by return mail, addressed to James Chilworth, Valhalla, Westchester Co., N. Y.

A. Have you taken my case?

B. If so, when do you expect to bring it to trial? (If you can't say precisely, within thirty or sixty days of the desired date will suffice.)

For reasons, which you will readily comprehend, I ask you to address me as James Chilworth. If you have any doubts, please see "Uncle Tom," who will straighten them out.

"I walk to Valhalla Friday next, expecting to find a note from you. As it's an 8-mile walk there and back, pray do not condemn me to a fruitless journey in this tropic heat.

"Yours truly,
(Signed) JAMES CHILWORTH."

(I speak in this letter of having 'phoned McCurdy. I did so; I 'phoned him from the public 'phone at Allendale. I speak of the heat as being "tropic." Tropic it certainly was; that was a terrifically hot summer, the summer of 1900. It is unnecessary to dwell upon the cruelty of a man like McCurdy, not to answer my prayer when I state, "I walk to Valhalla Friday next, expecting to find a note from you. As it is an 8-mile walk there and back, pray do not condemn me to a fruitless journey in this tropic heat. In spite of that this heartless fiend, McCurdy, condemned me to walk these eight miles in the heat, and many more. I never got one line from McCurdy. I never wrote him any more.

(By Counsel for Defendant: Objected to as irrelevant, incompetent, and hearsay)

By Counsel for Plaintiff: I now file the letter to Delos McCurdy which has been read by the witness, and ask that the same be marked for identification, and made a part of the evidence in this case. The said exhibit is marked "Plaintiff's Exhibit No. 102.

(By Counsel for Defendant: The introduction of this letter is excepted to as irrelevant and not the best evidence.)

Witness continues: On page 41 of "Four Years Behind the Bars" describing this letter which I wrote to the said "second New York lawyer," who was none other than Delos McCurdy, I said, in effect, that I was absolutely certain that McCurdy received this letter, and the placing of it in evidence to-day proves that I was telling the truth. I simply want to draw the attention of the court and the jury to the fact that the longer this case stays out of court, and the more opportunity I have to get exhibits, the more plainly the conservativeness of "Four Years Behind the Bars" is proved. Every exhibit which has come up since it was written has endorsed the truth of my statements therein. As I say, I did

not write again to McCurdy, nor did I tell Mr. Miller that I had written McCurdy. I did not think it was worth while. By the middle of October, 1900, my patience began to wear out, and McCurdy kept silent, but since I had Mr. Miller "on guard," so to speak, watching McCurdy, and having perfect faith in the loyalty of Mr. Miller's friendship to me, and his intelligence and experience in the world—wide experience and profound knowledge of human nature, strange as McCurdy's silence seemed, I felt there was some good reason for it, but I thought it was time to find out definitely about this—so, towards the end of October, 1900, I wrote Mr. Miller and asked him point blank whether he knew if McCurdy had taken my case. I have not time to-day to go into this further than to read the letters. I have not time to comment on them—they speak for themselves, and show that McCurdy deceived Mr. Thomas Jefferson Miller, as he had deceived Geo. H. Barnes, on the evidence of Barnes' letters, and had given Barnes to understand that he would go into the case. There was a slight misunderstanding between Mr. Miller and myself which was only temporary, and arose from his extreme sensitiveness at an expression which I used in my annoyance and anxiety in this stretch from May to October, nearly six months, caused by McCurdy's cold-blooded cruelty, but it all blew over and our friendship was as strong as ever. I simply thought that McCurdy had told Mr. Miller not to inform me of what was going on, and that Mr. Miller believed that McCurdy had my interests at heart and had kept from writing me—words to that effect. When I explained the matter to Mr. Miller, he understood, and our friendship was stronger than ever.

(By Counsel for Defendant: We make the same exception as stated above to the foregoing answer.)

By Counsel for Plaintiff: I now file the letters above referred to by the witness, and ask that they be marked for identification and made a part of the evidence in this case.

The said exhibits are marked "Plaintiff's Exhibits No. 162, No. 162-a, No. 162-b, No. 162-c, No. 162-d, and No. 162-e"

(By Counsel for Defendant: The introduction of these letters is excepted to for the reasons heretofore stated.)

Witness continues: I will simply say in conclusion that McCurdy did not even tell Mr. Miller that he ever received a letter from me, which I have just proved that he did so by the letter that I have shown that I wrote to McCurdy, and he actually hid that from Mr. Miller. Mr. Miller described it thus, in one of his letters:

> "At no time did the distinguished counsel (McCurdy) ever say or intimate he has received a letter from you."

I was convinced of the truth of the old adage, "Give a dog a bad name and hang him." I felt there was nothing left for me to do but escape. I could not get a New York lawyer to touch my case, but I was patient, if I do say so, and being a lawyer, I wanted to do everything legally, and I decided to make one more determined try to get out legally. I therefore wrote to a college classmate of mine, Mr. H. H. Frost, *Jr.*, (Halstead H. Frost, *Jr.*,) a lawyer who had coached me in law when I was entered to the bar at Poughkeepsie by Justice Barnard, of the New York Supreme Court. The letters designated "(9)" contains a registry receipt of James Chilworth, Valhalla, N. Y., Nov. 14, 1900, to Halstead H. Frost, *Jr.*, Esq., attorney and counsellor, No. 10 Wall Street, N. Y. City, receipted for by W. A. Carpenter, per C." (or what looks like "per C") postmaster at Valhalla.

By Counsel for Plaintiff: I now file the registry receipt just mentioned by the witness, and ask that the same be marked for identification, and made a part of the evidence in this case.

The said exhibit is marked "Plaintiff's Exhibit No. 164."

(*By Counsel for Defendant:* The introduction of this registry receipt is excepted to as irrelevant and not the best evidence.)

Witness continues: In the envelope designated "(*f*)" I have copies in my hand, in blue pencil, of two letters of introduction to Delos McCurdy,—two letters introducing Halstead H. Frost, *Jr.*, to Delos McCurdy, one was to be handed in first and the other to follow. Those letters I now read:

"White Plains, New York.
"Nov. 12th, 1900.

"Delos McCurdy, Esq.,
Attorney and Counsellor,
New York City.

"*Dear Sir*:—

This will be presented you by my friend, Attorney Halstead H. Frost, *Jr.*, Esq., who comes to see you about my case.

"Yours truly,
"JOHN ARMSTRONG CHANLER."

"Delos McCurdy, Esq.,
New York City.

"*Dear Sir*:—

Please hand bearer, Attorney Halstead H. Frost, *Jr.*, the following documents committed to you by Attorney Geo. H. Barnes, in my behalf. To-wit: my letter to Hon. Micajah Woods, Commonwealth's Attorney, Charlottesville, Va., dated *July* 3rd, 1897—his note to me in reply, dated October 16, 1897—an enclosed page of "The Quick or the Dead"—my answer,—my letters to said George H. Barnes—and the certified copy of my commitment papers.

"Yours truly,
"JOHN ARMSTRONG CHANLER."

By Counsel for Plaintiff: I give him the next series of letters of introduction referred to by the witness, and ask that the same be marked for identification, and made a part of the evidence in this case.

The said exhibit is marked "Plaintiff's Exhibit No. 10."

(By Counsel for Defendant: The introduction of these copies of said letters is accepted to for the reasons heretofore stated.)

[illegible]

By Counsel for Plaintiff: Mr. Chairman, I hand you a package of letters, will you please describe them?

(By Counsel for Defendant: The form of question objected to as not proper.)

A. These are, with one or two exceptions, letters which I wrote under my alias of "James Dickinson" from Sumter and Valhalla, handed respectively above are sent from Sumter from "Bloomingdale," White Plains. Sumter is about six miles and Valhalla about four; Sumter is off of the railroad; Valhalla is on the railroad. These are numbered. The first is not a letter; it is a copy of a telegram signed by the operator, that I sent Stanford White on the 19th of September, 1906. It is entitled "The Stanford" (given to Stanford White." It will be remembered that the [illegible] was one date on, and all the world was then well acquainted with the Stanford, who was the chief professor original to the conspiracy against [illegible], and in sending this [illegible] White, I desired to publicly intimate that he had acted [illegible] Stanford towards me. It is signed by the operator, "[illegible] Sylvester, Sept. 19th, '06." The date is having sent it. It is signed by him to a different handwriting from the [illegible] envelope, and the date also is to bill "Sept. 19th, '06." It reads as follows:

"Bradford Whites, Love Hollins, Bond and Whites on Fifth Avenue, New York.

"Mr. Chester's compliments to Mr. White and would like to speak at Eastbourne" as a pet name? He was used his reply by 'Red Dog'."

('Red Dog' was my name for Charles Rayment, my handwriting so valid, also a nickname that some of both their children had. I never saw it. It is beginning to now many grey hair, I understand, but my natural color was the same brick-red I ever was.) Then is the end of the telephone message. The following was appear at the foot of the message:

"Telephone operator: Please turn the phone and off so you hang the other end. Sign your name on each, that I may know the message was sent 9:10 P.M."

(Signed) J. A. C.

By (Counsel for Plaintiff): I now file the copy of telephone message referred to by Mr. Chalmers and ask that the same be marked for identification and made a part of the evidence in this case. The said exhibit is marked "Plaintiff's Exhibit No. 100."

(By Counsel for Defendant: We accept as the true version of this letter as contained and set the two exhibits.)

By the Witness: The next letter is contained "1111." That consists two letters from the late Hugh Wright White, (Commonwealth) Address for reference Canada, Co., and dated "Charlottesville, Va., 20 March, 1905" addressed to "Mrs. Chalmers, Bay, Kansas, U. S." which I now read:

"My Dear Sir:

Enclosed I hereby hand what is in my or all due to your son. I am a somewhat engaged how

both day and night in my business, that I have been unable to go to N. Y. to consult with certain friends of yours as to what course to pursue. It is certain that some prominent friend of yours in N. Y. could serve you more efficiently than I could, as I am a stranger to the people there and not familiar with the N. Y. procedure in such cases. I would suggest that you communicate with James Lindsay Gordon, Asst. Dist. Attorney, New York City; he is an old friend of yours—on the ground, and familiar with the influences that will have to be exercised to restore you to liberty and the exercise of your rights.

"I certainly sympathize with you in your situation and sincerely wish I could do something for your relief.

"My people are all well. With kind regards, I am,

Sincerely yours,

(Signed) MICAJAH WOODS."

Then my reply in blue pencil to the same, to Capt. Micajah Woods, dated March 26, from White Plains, "The Society of the New York Hospital," White Plains, N. Y., March 26th, '00," which I now read:

"Hon. Micajah Woods,

My Dear Captain:

Yours of March 29th to hand. I am very much obliged to you for replying to my previous note so promptly. I fully comprehend the difficulties surrounding your position. The gentleman you suggest that I should employ in my case is unavailable. I have, however, other lawyers in view. I have just written one of them in relation to my case and made an appointment for our meeting secretly. You will readily understand the importance to me and my case of my letter to you dated July 3rd, 1897, and its enclosures, to-wit: a certified copy of my commitment papers and a page from "The Quick or the Dead." I have a rough pencil copy

of the said letter, but it is not in shape for ready reference or easy legible reading. As this letter contains a complete and exhaustive history of my case, written when the events were fresh in my mind, you will easily see its importance to me in giving a complete and succinct recital of the events which led to my arrest and what followed, to my lawyers. I therefore enclose a special delivery stamp, which is almost as sure as a register stamp, to insure the safe arrival of the aforesaid vitally important documents to myself. Please mail them to *James Chilworth, Kensico, Westchester Co., New York.* I hope before long to have the pleasure of calling on you in Charlottesville and laughing over the predicament in which I am at present. In the meantime, please let the strictest secrecy clothe everything I have written you.

"Hoping to hear from you by return mail, and with sincere regards.

Sincerely yours,
"JOHN ARMSTRONG CHANLER."
"(The original signature is in ink.)"

Then another letter from the said Captain Micajah Woods, dated "Charlottesville, Va., 30 Mar. 1900," which I now read:

"My Dear Friend:

Yours received. I have mailed to you this morning the documents you wish. The paper you wrote is clear—strong—and logical, and will be of immense service to your friends and attorneys in N. Y.

"I do earnestly hope your efforts to secure relief will be successful; You must let me know the progress you make in this line, and advise me of the name or names of your N. Y. Attys.,—and at the proper time, if I can possibly leave here, I will go on and confer and cooperate with them.

"With my best wishes and kindest regards, I am,
Sincerely yours,
(Signed) MICAJAH WOODS."

"Jas. Chilworth,
(J. A. C.)
Kensico P. O.,
Westchester Co., N. Y."

all of which shows that I was doing my best to get out of "Bloomingdale," by legal means; that I had no idea whatever of escaping; that I wanted to get out on habeas corpus proceedings. The first use I made of my liberty when I could go outside of bounds by permission of Dr. Lyon was to enter into correspondence with lawyers looking to my release from "Bloomingdale" by legal process, and I worked from March, or rather, earlier than that—I wrote a letter which in the hurry of the proceedings now, owing to the fact that the case must be ready by the preliminary call of the January calendar, 1912, I have not time to find—that first letter, to which this one of Capt. Micajah Woods, dated 20 March, 1900, is a reply—but it was on or about the latter part of January, 1900, that I first wrote to Capt. Micajah Woods. This correspondence is fully described in "Four Years Behind the Bars," and this missing link is very fully described—this letter which I do not find now—this first letter that I wrote.

(By Counsel for Defendant: The same objection.)

By Counsel for Plaintiff: I now file the letters just referred to by Mr. Chaloner, and ask that the same be marked for identification and made a part of the evidence in this case. The said exhibits are marked "Plaintiff's Exhibits No. 155, No. 155-a, and No. 155-b."

(By Counsel for Defendant: The introduction of these exhibits is excepted to for the reasons heretofore stated.)

By Witness: The envelope marked "(6')" contains a copy in my handwriting in blue pencil, which is so torn from age that the signature is wanting and the date is illegible. It is addressed to the Hon. Micajah Woods, Commonwealth's Attorney, Charlottesville, Va., and reads:

"Our friend's case comes up next Friday, brought by his family. Are you still interested? Wire collect."

The paper is here torn. My recollection is that this was a wire which I gave to H. V. N. Philip, my former law partner, with the request that he send it to Capt. Micajah Woods, just before the 1899 proceedings before the Sheriff's Judy took place, in order that he might come on and defend me if he could. I do not know that this telegram was ever sent, and not coming across this receipt until to-day, for reasons already given or told a day or two ago, I did not ask Capt. Micajah Woods when I saw him if he had ever got that telegram, so I do not know if it was ever sent by Philip. This envelope also contains a registry receipt dated Valhalla. N. Y. "Received May 12, 1900 of me as James Chilworth, Valhalla, N. Y." A letter addressed to George H. Barnes, 52 N. 19th St., New York City, signed W. G. Carpenter, per C.—or something like "per C.—P. M."

By Counsel for Plaintiff: I now file the telegram and registry receipt referred to by the witness, and ask that the same be marked for identification, and made a part of the evidence in this case. The said exhibits are marked "Plaintiff's Exhibits No. 161 and No. 161-a."

(By Counsel for Defendant: Excepted to for the reasons heretofore stated.)

* * * * * * * *

PLAINTIFF'S CORRESPONDENCE WITH GEORGE H. BARNES, FROM "BLOOMINGDALE" re DELOS McCURDY, 1074-1082.

By Witness: Learning that Capt. Micajah Woods could not find it convenient to take my case, as the letters prove.

I then reached out to get another lawyer, and letter "B" which I now read, was from George H. Barnes, a member of the bar of New York City, and furthermore, a classmate of mine of the class of '83, Columbia University, and whom I wrote to, and who is known in the correspondence set forth in "Four Years Behind the Bars" as "the first New York lawyer." I sunk the name of this lawyer when I published "Four Years Behind the Bars" in 1906; the time was not yet ripe, so I sunk the names of these lawyers and numbered them—he was the first New York lawyer. This letter marked "(3)" is addressed to "Mr. James Chilworth, Kensico, Westchester Co., New York," and the envelope is postmarked New York, N. Y., Apr. 7, 1900; and in the upper left-hand corner of the envelope is written "Geo. H. Barnes," followed by the printed words, "American Lithographic Co., Litho Building, 19th Street and 4th Avenue, New York City." This envelope has written on it in my handwriting "B 1-2-3," which means first, second and third letters from Mr. Barnes, which I now read:

B (1)

"50 East 19th St., N. Y.,
"April 5th, 1900.

"Mr. James Chilworth,
Kensico, Westchester Co.,
New York.

"Dear Sir:

Your registered letter was received and the matter therein referred to will receive my immediate and best attention. As soon as I have any definite information, which I hope will be in the course of a few days, I will write you more fully.

"Very truly yours,
(Signed) GEO. H. BARNES.

B (2)

"50 East 19th Street,
"New York, May 7, 1900.

"Mr. James Chilworth,
Kensico, N. Y.

"Dear Sir:

Long letter and papers received. The matter is receiving attention and I will let you hear from me as soon as possible.

"Very sincerely yours,
(Signed) GEO. H. BARNES.

"American Lithographing Company,
"Litho Building, 19th Street and 4th Ave.,
"New York, May 14th, 1900.

"My dear C——

Yours of May 12th just received and I must apologize for keeping you in suspense, but for the past week I have been under the weather, and have been unable to attend to anything but your affairs have not been forgotten and I am doing exactly what you asked me to do. I have had a long talk with Delos McCurdy, and he now has your papers and has had them for some time. He is a very busy man and he promised me he would give this matter his most careful attention. I will do my best to have an interview with him this week, and will write you immediately.

"Very sincerely yours,
(Signed) GEO. H. BARNES.

In the third letter I draw attention to the following sentences:

"I have had a long talk with Delos McCurdy and he now has your papers and has had them for some time. He is a very busy man and he promised me he would give

this matter his most careful attention. I will do my best to have an interview with him this week and will write you immediately.

"Very sincerely yours,
(Signed) GEO. H. BARNES."

By Counsel for Plaintiff: I now file the letters just referred to by the witness and ask that the same be marked for identification and made a part of the evidence in this case.

The said exhibits are marked "Plaintiff's Exhibits No. 157, No. 157-a, and No. 157-b."

(By Counsel for Defendant: Excepted to as irrelevant and not the best evidence and for the other reasons heretofore stated.)

By Witness: The next is marked "(4)" and contains a copy of my letter to George H. Barnes aforesaid, dated May 12th, 1900, from "The Society of the New York Hospital, White Plains, N. Y." Being hurried, as I am to-day, I cannot give the matter the care I otherwise would, and shall say that when this case reaches hearing, I should like one of my counsel in New York to read the description of my sending these letters and receiving them from the book already in evidence in this case—my book entitled "Four Years Behind the Bars of Bloomingdale; or The Bankruptcy of Law in New York"—I would like read from pages 36 to 43 inclusive, which contains the "Statement of Facts" taken bodily out of the "Brief and Argument," a writing written by me and printed and copywrighted, entitled "Chanler vs. Sherman," printed in 1905 by O. E. Flanhart Printing Co., Richmond, Va. These pages from the "Statement of Facts" describe fully these letters in their chronological order. The said letter to Geo. H. Barnes is as follows:

"(COPY)

"The Society of the New York Hospital,
"Confidential. "White Plains, N. Y.
"May 12th, 1900.

"George H. Barnes, Esq.,
Attorney and Counsellor,
52 East 19th St.,
New York City.

"My dear Barnes:

It is now over a month since I heard from you. You must admit that your silence, under the circumstances, is rather disquieting to a man in my situation. If for any reason you have decided to withdraw from my case, please do not hesitate to say so, and I shall understand and thank you for your frankness. In that case, please be so kind as to return me *under a register stamp* the following papers, to-wit: My letter, dated July 3rd, 1897, and the party's reply to it; the certified copy of my commitment papers, and the *postmarked envelope* enclosed therewith; the page from the novel enclosed to you under the same cover, and the sonnets. I shall, of course, reimburse you for the above postage, as well as for the other stamps you have spent on me, on my release. Kindly *register* the above papers by return mail to *James Chilworth, Valhalla* (not Kensico), Westchester Co., New York.

"Very sincerely yours,
"JOHN ARMSTRONG CHANLER."

By Council for Plaintiff: I now file the letter to George H. Barnes, dated May 12, 1900, mentioned by the witness, and ask that the same be marked for identification, and made a part of the evidence in this case.

The said exhibit is marked "Plaintiff's Exhibit No. 158."

(By Counsel for Defendant: The same objection as heretofore stated.)

By Witness: In the haste with which this is done, the necessity for which has been described to-day, I find I have marked one letter No. (5) which is chronologically out of its order, slightly, and it would take too much time to change the series of numbers in this batch of letters to alter the number. It does not interfere with the reading. This letter is marked "(5)," and is to me, addressed under my alias of "James Chilworth," Kensico, Westchester Co., N. Y., and is from William J. Brown, George H. Barnes' clerk, and reads as follows:

"52 E. 19th St.,
"New York.
"April 4th, 1900.

"Mr. James Chilworth,
Kensico, Westchester Co., N. Y.

"Dear Sir:

Mr. Barnes will be at his office on Thursday, April 5th, when he will receive the registered letter about which you have written me.

"Yours truly,
(Signed) WILLIAM J. BROWN."

By Counsel for Plaintiff: I now file the letter referred to by the witness from William J. Brown, and ask that the same be marked for identification, and made a part of the evidence in this case.

The said exhibit is marked "Plaintiff's Exhibit No. 159.

(By Counsel for Defendant: Excepted to for the reasons heretofore stated.)

By Witness: No. 6 contains a registry return receipt to me as James Chilworth, dated Valhalla, New York, May 12, 1900, from George H. Barnes, 52 E. 19th Street, New York City, receipted by "Geo. H. Barnes per C. C."

By Counsel for Plaintiff: I now file the registry return

receipt referred to by the witness, and ask that the same be marked for identification, and made a part of the evidence in this case.

The said exhibit is marked "Plaintiff's Exhibit No. 160."

(By Counsel for Defendant: Excepted to for the reasons heretofore stated.)

By Witness: The envelope marked "(6')" contains a copy in my handwriting in blue pencil, which is so torn from age that the signature is wanting and the date is illegible. It is addressed to the Hon. Micajah Woods, Commonwealth's Attorney, Charlottesville, Va., and reads:

"Our friend's case comes up next Friday, brought by his family. Are you still interested? Wire collect."

The paper is here torn. My recollection is that this was a wire which I gave to H. V. N. Philip, my former law partner, with the request that he send it to Capt. Micajah Woods, just before the 1899 proceedings before the Sheriff's Jury took place, in order that he might come on and defend me if he could. I do not know that this telegram was ever sent, and not coming across this receipt until to-day, for reasons already given or told a day or two ago, I did not ask Capt. Micajah Woods when I saw him if he had ever got that telegram, so I do not know if it was ever sent by Philip. This envelope also contains a registry receipt, dated Valhalla, N. Y., "Received May 12, 1900 of me as James Chilworth, Valhalla, N. Y.;" a letter addressed to George H. Barnes, 52 E. 19th St., New York City, signed W. O. Carpenter, per C.—or something like "per C"—P. M.

By Counsel for Plaintiff: I now file the telegram and registry receipt referred to by the witness, and ask that the same be marked for identification, and made a part of the evidence in this case.

The said exhibits are marked "Plaintiff's Exhibits No. 161 and No. 161-a."

(By Counsel for Defendant: Excepted to for the reasons heretofore stated.)

By Witness: This last note from George H. Barnes just filed was the last I ever received from him. George H. Barnes is described as "the first New York lawyer" in the said book, "Four Years Behind the Bars." I waited until the latter part of May, 1900, and not hearing from Mr. Barnes, I then wrote on May 24th to an old friend of mine, and he is also a friend of the said Delos McCurdy, known as "the second New York Lawyer." I wanted to get Delos McCurdy as my attorney in New York, as I knew he was a profound lawyer. He was the man who broke Samuel J. Tilden's will, and cut down the size of Tilden's gift to the New York Public Library fifty per cent. or so, as I remember it, by breaking this will. I knew he was a learned lawyer, and therefore, wanted him on my side. I did not think that he was anything of an orator, but my case being one of pure law, I needed no oratory.

* * * * * * *

PLAINTIFF'S CORRESPONDENCE WITH H. H. FROST, JR., FROM "BLOOMINGDALE," 1096-1101.

Witness continues: I will simply say in conclusion that McCurdy did not even tell Mr. Miller that he ever received a letter from me, which I have just proved that he did do by the letter that I have shown that I wrote to McCurdy, and he actually hid that from Mr. Miller. Mr. Miller describes it thus in one of his letters:

> "At no time did the distinguished counsel (McCurdy) ever say or intimate he had received a letter from you."

I was convinced of the truth of the old adage, "Give a dog a bad name and hang him." I felt there was nothing left

for me to do but escape. I could not get a New York lawyer to touch my case, but I was patient, if I do say so, and being a lawyer, I wanted to do everything legally, and I decided to make one more determined try to get out legally. I therefore wrote to a college classmate of mine, Mr. H. H. Frost, Jr. (Halstead H. Frost, Jr.), a lawyer who had coached me in law when I was entered to the bar at Poughkeepsie by Justice Barnard, of the New York Supreme Court. The letter designated "(8)" contains a registry receipt of James Chilworth, Valhalla, N. Y., Nov. 14, 1900, to Halstead H. Frost, Jr., Esq., Attorney and Counsellor No. 18 Wall St., N. Y. City, receipted for by "W. A. Carpenter, per C." (or what looks like "per C.") postmaster at Valhalla.

By Counsel for Plaintiff: I now file the registry receipt just mentioned by the witness, and ask that the same be marked for identification, and made a part of the evidence in this case.

The said exhibit is marked "Plaintiff's Exhibit No. 164."

(By Counsel for Defendant: The introduction of this registry receipt is excepted to as irrelevant and not the best evidence.)

Witness continues: In an envelope designated "(8')," I have copies in my hand, in blue pencil, of two letters of introduction to Delos McCurdy—two letters introducing Halstead H. Frost, Jr., to Delos McCurdy, one was to be handed in first and the other to follow. These letters I now read:

"White Plains, New York,
"Nov. 17, 1900.

"Delos McCurdy, Esq.,
Attorney and Counsellor,
New York City.

"Dear Sir:

This will be presented you by my friend, Attorney Halstead H. Frost, Jr., Esq., who comes to see you about my case.

"Yours truly,
"JOHN ARMSTRONG CHANLER."

"White Plains, New York,
"Nov. 17, 1900.

"Delos McCurdy, Esq.,
New York City.

"Dear Sir:

Please hand bearer, Attorney Halstead H. Frost, Jr., the following documents committed to you by Attorney Geo. H. Barnes, in my behalf. To-wit: my letter to Hon. Micajah Woods, Commonwealth's Attorney, Charlottesville, Va., dated July 3d, 1897,—his note to me in reply, dated Oct. 14th, 1897—an enclosed page of "The Quick or the Dead"—my sonnets—my letters to said George H. Barnes—and the certified copy of my commitment papers.

"Yours truly,
"JOHN ARMSTRONG CHANLER."

By Counsel for Plaintiff: I now file the said copies of letters of introduction referred to by the witness, and ask that the same be marked for identification, and made a part of the evidence in this case.

The said exhibit is marked "Plaintiff's Exhibit No. 165."

(By Counsel for Defendant: The introduction of these copies of said letters is excepted to for the reasons heretofore stated.)

Witness continues: I then wrote Frost, as will be shown by the exhibit marked "(82)," registry return receipt dated Nov. 14, to James Chilworth, Valhalla, Westchester Co., N. Y., signed by Halstead H. Frost, Jr., "H. H. Frost, Jr., by Wm. A. Allen," or some such name. I met Frost at Valhalla, and have here two letters from him, one dated Nov. 19, 1900, signed "H. H. Frost, Jr.," and the other dated Nov. 26, 1900, signed "H. H. Frost, Jr." His signature, I will say, is extremely illegible, nobody would guess it was "Frost" to look at it. (The letterhead proves it, though.) The letters I will now read:

F (1)

"HALSTEAD H. FROST, JR.
"Attorney and Counsellor,
"18 Wall Street.

"Nov. 19th, 1900.

"My dear old boy:

I put some money in my pocket on Saturday intending to ask you if you had need of it, but I was so engrossed with your story that I forgot it entirely. Let me know when you need more. My heart aches for you.

"Yours most affectionately,

(Signed) H. H. FROST, JR."

F (2)

"HALSTEAD H. FROST, JR.
"Attorney and Counsellor,
"18 Wall Street.

Nov. 26, 1900.

"My dear old boy:

My delay means neither abandonment nor betrayal. You know, of course, that much depends upon the plan of campaign, and I wish to feel sure of my ground before moving.

"In the first place, I wish to get access to you through the "front door" before I do anything of a decided nature. To do this, I must get letters to take me by the "three headed dog." I have the matter of letters in train and hope to get them before long .

"You see, if I fail, I do not wish my failure to hurt you. If I start in now, they will immediately suspect some clandestine meeting with you and shut off your privileges. They would hardly do that if I get my information openly and act wholly of my own volition and without your knowledge. If I am unsuccessful, you will be at least no worse.

"I will send you in a few days notice of my intended visit so you may have some good excuse for keeping your rooms that afternoon, for I shall come in the afternoon. Do not look for me too soon for it will require some time yet to complete arrangements.

"Yours sincerely and affectionately,

(Signed) H. H. FROST."

Both these letters are in envelope marked "(8²)." One came in envelope marked "(8²)" and the other in envelope marked "(9)." One envelope is postmarked Nov. 19th, which agrees with the letter aforesaid, and the other Nov. 26, which also agrees with the letter aforesaid.

By Counsel for Plaintiff: I now file the registry return receipt and the two letters just referred to by the witness, and ask that the same be marked for identification and made a part of the evidence in this case.

The said exhibits are marked "Plaintiff's Exhibits No. 166, No. 166-a, and No. 166-b.

(By Counsel for Defendant: The same objection as above stated.)

Witness continues: On receipt of this second letter from Mr. Frost, I wrote him a letter dated White Plains, N. Y.,—of which I hold a copy,—dated November 27, 1900, which I now read:

"Copy.

"White Plains, New York.

"H. H. Frost, Jr., Esq.,
Attorney-at-Law,
"18 Wall St., New York.

"Dear Frost:

Your Delphic, your oracular note, of Nov. 26th, to hand. I'm sure you mean well, old man, but I assure you that you have taken a most grave responsibility in

moving in my matter without my knowledge. I most earnestly request you to take no further steps of any kind or description until you hear from me.

"In haste,

"Affectionately yours,

"JOHN ARMSTRONG CHANLER.

"P. S.—

"I count, of course, upon your holding all my papers till further orders."

I saw that I had to fly. Mr. Frost's taking the responsibility of letting the "Bloomingdale" authorities know that a lawyer was coming to see me would have "gummed the game," and I did not know what other "breaks" he was going to make, so I determined to get out. I escaped the next day at two o'clock. This escape is fully described in "Four Years Behind the Bars"—I have not time to go into it now.

PLAINTIFF'S FAREWELL LETTER TO DR. SAMUEL B. LYON UPON ESCAPING FROM "BLOOMINGDALE," 1101-1102.

I have here a copy of a letter which I wrote to Dr. Samuel B. Lyon, which I posted in New York after my escape. It is dated "The Macey Villa, Nov. 28th, 1900." I wrote it there and posted it in New York. I now read the letter:

"The Macey Villa."

"Nov. 28th, 1900.

"Dr. Samuel B. Lyon,

Medical Supt. Society of the New York Hospital.

"My dear Doctor:—

You should not be surprised to hear of my having taken "French leave" of you, that being quite on the cards for a man accused—falsely accused—of being the reincarnation of Napoleon Bonaparte.

"My affairs require my presence elsewhere for about two weeks—as I calculate: at the end of which time I

calculate to return here. So you need be at no anxiety on my account.

"In the meantime, please have my keeper, W. Bradley, take care of my effects, particularly my clothes, which I wish aired, as usual, twice a week. I count upon finding my effects, barring said clothes—untouched upon my return, particularly the large leather dispatch box at the head of my bed, my books, and the seven stately columns of daily newspapers—all duly read and blue-penciled—ranged against the walls of my cell: the accumulation of now nearly four years.

"With the assurance of my most distinguished consideration,

"Believe me, my dear Doctor,

"Faithfully yours,

"JOHN ARMSTRONG CHANLER.

"P. S.—

"Please be so kind as to have continued all the subscriptions—daily and otherwise—for all the publications to which I at present subscribe. Keeper Bradley has the list. I do not wish to have any break in my series of daily papers, etc., on my return here."

J. A. C."

WHITE, STANFORD, PLAINTIFF'S CONNECTION WITH, 754-756, 770-771, 937.

By Counsel for Plaintiff:

Q. Who was Stanford White, Mr. Chaloner?

A. He was a very close friend of mine, of the firm of McKim, Meade and White Architects, to whom I gave a power of attorney for my affairs—a limited power—a short time, a few weeks, before my incarceration in "Bloomingdale," at his, Mr. White's request. I gave him this—times were still dull, I wanted to get back to "The Merry Mills," and if Mr. White wanted to take on the care and worry of my affairs in New York, he was a rich man and an honest

man as regards money matters—why, I had no objection to his doing so, and I also had a psychological interest to know what on earth he was driving at in making such a preposterous offer in asking me for an unlimited power of attorney. I declined to give him an unlimited power, but allowed him to take a limited power of attorney for the reasons given.

Q. Mr. Chaloner, was Mr. Stanford White one of the co-conspirators against you?

A. He was.

Q. How long, Mr. Chaloner, was it before you went to New York with Mr. Stanford White that Mr. White applied to you to give him an unlimited power of attorney?

(By Counsel for Defendant: Objected to as irrelevant.)

A. He asked me for that shortly after my arrival in New York on the 13th of February, 1897, say a week or something like that, possibly later, but it was between that and the early part of March, between that and the 10th of March.

Q. Mr. Chaloner, do I understand you to say that after Mr. Stanford White had lured you to New York for the purpose of being incarcerated in a hospital for the insane, that he then applied to you to give him this power of attorney?

(By Counsel for Defendant: We object to this question as leading.)

A. Yes, it was after he had lured me to New York that he made this application.

Q. Mr. Chaloner, your brother, Winthrop Astor Chanler, testified on page 17 of his disposition, of his own knowledge that you went to New York with Mr. White and Dr. Fuller because you wanted to, and I now ask you to give your reasons why you went to New York with those gentlemen?

A. That was because White begged me, literally exhorted me to go; his language was, in effect, "For God's sake, come and take a plunge in the Metropolitan whirl," and if I do say so, I would rather be obliging than disobliging, and Dr. Fuller joined his prayers with White's prayers and, figuratively speaking (I flag the Docs) mingled his tears with White's tears, and I yielded to their applications and went.

Q. Mr. Chaloner, when you left Virginia with Mr. Stanford White, was it your intention to take up a residence in New York?

A. Far from it. Nothing could have been farther from my mind—nothing on earth could have been farther from my mind than to take up a residence in New York. I had given up a residence in New York for good. I preferred the South from every point of view.

(By Counsel for Defendant: We object to this as irrevelant.)

* * * * * * * *

By Counsel for Plaintiff:

Q. On page 64 your brother states that Mr. Stanford White took charge of your property at your request—what have you to say relative to that statement?

(By Counsel for Defendant: We object to this as improper evidence.)

A. That is utterly false. Mr. Stanford White earnestly begged me to permit him and the distinguished sculptor, the late Augustus St. Gaudens, to become my powers of attorney—requested me to give him and Mr. St. Gaudens an unlimited power of attorney over my property, which I declined to do for the reasons aforesaid already explained. I

did give him a limited power of attorney in 1897, before I was carried to "Bloomingdale."

* * * * * * * *

By Counsel for Plaintiff:

Q. On page 104 your brother states that Drs. Randolph and Fuller said to him that you would not answer any telegrams receive from anybody. What have you to say as to this?

(By Counsel for Defendant: Same objection, as leading, calling for hearsay, and incompetent.)

A. I never received any telegrams while I was at "The Merry Mills" from my arrival there, Christmas Eve, 1896, to my departure therefrom, February 13th, 1897, with the possible exception of one from Stanford White relative to a visit to me on his part and St. Gauden's, to which I wired back that I was not well enough to see him, words to that effect. As I have already described, my relations were rather strained with Mr. White and I did not look forward to a visit from him with pleasure and I needed a rest, though I was not sick, and I meant by sending that telegram the usual society statement when a person does not want to see another, the man or woman says he is not feeling well, or he is out, not at home. That was the solitary telegram I received from Christmas Eve, 1896, to the 13th of February, 1897, inclusive—if I received that and if I answered it, I have been over this ground so often that it bores me so that I am letting up on remembering the negligible details.

* * * * * * * *

DOCUMENTARY PROOF THAT DR. P. M. WISE, PRESIDENT OF THE NEW YORK STATE COMMISSION IN LUNACY CALLED ON PLAINTIFF AT "BLOOMINGDALE," 863-865.

By Counsel for Plaintiff:

Q. Mr. Chaloner, have you a letter from Mr. C. E. Atwood, relative to a call from Dr. P. M. Wise?

(By Counsel for Defendant: The same objection.)

A. I have.

By Counsel for Plaintiff:

Q. Have you any newspaper clippings in reference to the removal of Dr. Wise from the State Lunacy Commission?

(By Counsel for Defendant: The same objection.)

A. I have.

By Counsel for Plaintiff:

Q. Mr. Chaloner, I hand you a letter signed by C. E. Atwood, also a newspaper clipping, and ask whether or not you identify them?

(By Counsel for Defendant: The same objection.)

A. I do.

Q. Will you please describe them?

(By Counsel for Defendant: The same objection.)

A. The letter is from Dr. C. E. Atwood, of the "Bloomingdale" medical staff, and is as follows:

"Dear Mr. Chanler:

Dr. P. M. Wise, Pres. of the State Commission and

Mr. Parkhurst, commissioner, will call on you after lunch, probably between 1:30 and 2 p. m. to-day.

"Very truly,

"June 16. "C. E. ATWOOD."

I have a pencil mark note made at the time—"The latter (meaning Mr. Parkhurst) did not show up. Dr. P. M. Wise called with Dr. S. B. Lyon 6-16-98.—J. A. C." The newspaper clipping is from the Philadelphia Ledger under date 12-22-'00, and says—"Governor Roosevelt intends to leave his successor the appointment of President of the State Lunacy Commission in place of Dr. Wise, whom he has removed from office."

(By Counsel for Defendant: We make the usual objection.)

By Counsel for Plaintiff: We now file the letter and newspaper clipping just referred to by the witness, and ask that the same be marked for identification and made a part of the evidence in this case.

The said exhibits are marked "Plaintiff's Exhibits No. 115 and No. 116.

(By Counsel for Defendant: We object to the introduction of these exhibits for the reasons heretofore stated.)

DEPOSITION 1911-12—Continued.

VOLUME IV

United States Circuit Court for the Southern District of New York.

JOHN ARMSTRONG CHALONER, Plaintiff,

against

THOMAS T. SHERMAN, Defendant.

PART II.

DEPOSITION OF JOHN ARMSTRONG CHALONER, 1911.

5:40 P. M.,
Colonial Hotel,
Charlottesville, Virginia, December 18, 1911.

APPEARANCES:

JOHN ARMSTRONG CHALONER, ESQ., Plaintiff in Person, and Counsel-in-Chief on his own behalf;
W. GILMER DUNN, ESQ., of Counsel for Plaintiff.
JUDGE R. T. W. DUKE, JR., Counsel for the Defendant.

ANCESTRY OF PLAINTIFF, 187-191.

Of course, there are any number of noble exceptions among the rich, among society, but I am speaking of the ruck of society, the average addle-pated dude, the average mental lightweight, well-dressed, well-groomed, well-hatted, well-

footed and well-gloved "lightweight" of society. They are the lightest part of society, light, not in avoirdupois—they are generally over-fed—but light in mental weight, and hence I use the term "scum," because scum being the lightest thing in the pot comes to the top. I call it "white scum" because they happened to be well-groomed and clean outwardly. The outside of the platter is clean, at all events, however sepulchral may be their hearts and characters. I called them "riff raff" of society in contradistinction to the bone and sinew of society; the plain people, the great people. And being born and largely educated in New York I had seen the general retrogression and finally, to me, degradation of New York society to its present low level to-day. I speak now as a man whose ancestors have always been in the learned professions and of record on his father's side for two hundred and one years before going back to the records in Burke's extinct or dormant Baronetage, in which my name appears, my family name of Chaloner. Under the name Sir Thomas Chaloner, statesman, writer, knighted by James I—the title of Baronet was created by James I, it did not exist before his time—one of the oldest Baronetages in England, James I. having originated the title of "Baronet" himself. Before the time of James I. the title did not exist. I have used Burke's extinct or dormant Baronetage and have seen it myself, Sir Thomas Chaloner's name as found in the list of celebrated people at the end of the unabridged Standard Dictionary, published in New York in 1897, which I had with me in "Bloomingdale"—that is, to the best of my recollection it appears in the Standard, if it does not, it appears in Webster's International Dictionary of recent date. In Burke's Baronetage it says that Sir Thomas Chaloner came from "An ancient Welsh family." This name is one of the bluest-blooded in England—makes the name Chaloner—because the Welsh are the oldest people in the British Isles. They go back to the original Britons and Druids of the time of Julius Caesar. I mention all this reluctantly, but I do it so that lying newspapers, bootlickers, snobbish newspapers, who lick the boots of millionaires, can-

not corral me with the Astors—I am only part Astor. I don't travel on my Astor blood and I don't travel on my Astor money. My father had money of his own and my maternal grandmother had money of her own—were independently rich—so that my family *always* had money—my father's family—were independently rich—and the estate of E. S. Chanler is, or at least was until recently, if not there now, in the New York directory, Trow's Directory—that is, the estate of my paternal grandmother, Elizabeth Stuyvesant Chanler, my father's mother, and not a dollar of her estate came from the Astors. I have a great respect for my maternal grandmother when I never saw, my devoted mother's mother, and I have a great respect for the great ability of the original John Jacob Astor, son of the Waldorf butcher—a great respect. I consider him on the record the greatest business man this country has ever produced. He had fleets and armies at his command. His trading vessels stretched from the Atlantic to the Pacific and were forts manned by armed men to protect them from the hordes of ancients which then covered the plains and mountains, or rather foot-hills of the mountains and valleys of the West. His fleets sailed to China. He was the most all-round merchant prince that this country has ever produced. I challenge any person to gainsay that. All modern business men are specialists, as financiers dealing directly with nothing but money. Each modern business man deals with his own line of business. He created the product which brought money and transported that product, protecting it as I have just said.

I have gone into my aristocratic lineage in order that the snobbish, boot-licking press of New York—with some few notable exceptions, men who blackguard me and say my ancestry is Astor—it is only Astor to a certain limited degree—or that my money all came from the Astors, which it does not. And, furthermore, I don't travel on my money. I travel on my literary output, notably "Chaloner on Lunacy." I frankly admit that I do travel on that and stand on that. I challenge attack thereon. This is all necessary for the criticism that I

am about to launch against New York society. I have got to prove that I am, as they snobbishly say, born in the purple. It is no feather in my cap, but as a lawyer, I use that to remove my remarks from the only angle of attack which hurt Col. Henry Watterson's criticism on the same society. They said he was not a member of New York society and he was not a rich man and that he spoke out of jealousy, both of which assertions were foully false in their spirit, because a man need not be a member of New York Society, nor need he be a rich man to be able to give a cultivated and expert opinion on New York society, which, as I have already said, Colonel Watterson denounced in the following terms:

> "You can scarcely throw a brick into the Four Hundred without hitting either an injured husband, a recreant wife, or at least a gilded nincompoop,"

a sentiment in which I heartily concur. I have launched into my lineage with great reluctance and I point to the fact that this is the first time in my life I have ever mentioned it publicly, and I do so in order to protect my flanks in my advance into the enemies' country (I flag the Docs), as I advance into New York society, which I do now.

New York society, when I came into it, by which I do not mean that I was born in the shadow of the Astor Library, in the home of William B. Astor, my great-grandfather in Lafayette place, next to the Astor Library, but I mean when I came on the tapis, on the carpet, so to speak, when I entered society as an undergraduate at Columbia, at the balls of my great-aunt, the late Mrs. William Astor, the so-called "Queen of Society," I was well-fitted for a peep behind the scenes of New York society. On my father's side I am *Stuyvesant*, and he was the last Dutch Governor of New Amsterdam, which was the Dutch name of Gotham, or New York. On my mother's side I was also a cousin of the creator of the name "*Four Hundred*," namely, the late Ward McAllister, and none less. He was a nephew or cousin of my

paternal grandfather, the late Samuel Ward, the uncle of the novelist, Marion Crawford, the brother of Mrs. Julia Ward Howe, and the said Ward McAllister was the brother of about the greatest lawyer the Pacific Slope has ever produced, namely, the late Hall McAllister, one of the greatest lawyers this county has ever produced.

LENGTH OF HIS DEPOSITION EXPLAINED BY PLAINTIFF, 77-98, 144-145.

(Mr. Duke: The aforesaid answer is excepted to as irrelevant, and that it is a repetition probably for the third time of the circumstances detailed therein.)

Mr. Chaloner: As chief counsel I will reply to the observation of my learned opponent, Judge Duke, that I do not want to inflict this record on the Court and Jury. I speak at the length I do because I am not going to be in court in New York when this case comes up, and I have explained at length I have to talk all round Robin Hood's barn on every topic that comes up in the course of this deposition, and when this deposition gets to New York, I am convinced that the learned Court will find some means of getting round the punishment which it would be to an intelligent jury to force them to sit through the reading of this deposition. I am convinced a way will be found to avoid that calamity, and I respectfully suggest as his counsel that the Court take up two or three of the most damaging assertions against my client, John Armstrong Chaloner, and read his reply in opposition to those assertions and then take up as much of this examination which I am now taking, which is in the regular ordinary commonplace form of deposition. namely, by question and answer, and go through as much of this as is necessary to satisfy the Court and Jury of the sanity and competency of my client, and also of his sanity and competency at the time he was committed, because as chief counsel, I say frankly I shall not be satisfied with a

verdict which simply returns me my property; I say not only as chief counsel, not only as a law writer, but as a man who *has got* a crusade before him already described (I flag the Docs), a crusade in the literary sense of the word, mapped out to do his best to reform these lunacy laws by devoting the balance of his life to that end, if necessary, I say with that in view if this decree does not pronounce the plaintiff sane at the time of his incarceration, sane and competent on the strength of the letter which he wrote to Micajah Woods, the late Captain Micajah Woods, Commonwealth's Attorney of Albemarle County, July 3rd, 1897, which letter was admitted to have been received by him and identified, the actual original letter by *Captain Woods* on the stand at the 1908 deposition, here in the presence of Joseph H. Choate, Jr., of counsel for the other side; and I also base my claim for the sanity of this plaintiff on the fact that he was made a member of the Executive Committee of the Roanoke Rapids Power Company, which company is a two-million-dollar concern, its stock reduced for business reasons only, the property is the same as ever when it was agreed to be underwritten by a Philadelphia trust company in 1893, for two millions of dollars, when the 1893 panic nipped that proposition in the bud, and the trust company withdrew; the certified copy of the minutes of the Roanoke Rapids Power Company meeting held in my client's rooms, in the plaintiff's rooms in the Hotel Kensington in December, 1896, which certified copy is on file in this case, show that he was appointed a member of the Executive Committee of the said Roanoke Rapids Power Company, the Executive Committee consisting of two persons, the resident-Director, namely, himself, John Armstrong Chaloner, and the president of the said company; this committee, as will appear from the said minutes, was a most important committee; it had the authority given it by the said meeting to obligate the Roanoke Rapids Power Company to the entire amount of its capital. This was not expressed in so many words, but it is undoubtedly implied by the power given this Committee in the words

of the motion which created it and which was passed by the vote that this Committee "Shall spend no money not voted for and set aside by the Board of Directors for that purpose, but should an instance arise in which the property of the company was in jeopardy, then and in that event, the said Executive Committee were empowered to take any steps and incur any expense that was necessary to avoid the said danger to the company's property." I do not limit myself to these two specific written acts, the said letter to the said Micajah Woods, July 3, 1897 and certified by an officer of the company, by the company's counsel, Judge J. M. Mullin of Petersburg, Virginia, now on the bench and then on the bench, the said certified copy of the said Roanoke Rapids Power Company's meeting in the plaintiff's chambers at the Hotel Kensington, December, 1896; I do not limit my claim to my client's sanity and competency to these two documents; there are other documents in the case which can be brought in, but I respectfully submit in the Court that these are sufficient in law and equity, and in fact, to establish beyond cavil the sanity of my client when he was arrested, particularly since the commitment papers state that this falsely alleged insanity of my client began in November, 1896. We, therefore, have the spectacle of a man who has been six weeks a lunatic—This Roanoke Rapids Power Company meeting took place about the middle of December, there or thereabouts, and my client was declared in the commitment papers to have begun to be insane in November, therefore, he had been six weeks a lunatic *when he was given control with one other director of a two-million-dollar property.*

I say, as chief counsel, that I cannot be satisfied with a verdict which simply returns his property to my client. It should require no argument to show that it is not fair to rob a profession man of his reputation for sanity and ability, even common sense, as has been done in these proceedings against my client. It is neither equitable nor legal to allow such a stigma to remain unremoved, provided it is undeserved. I respectfully submit to the Court that I have proved

it is undeserved, by which I mean that these two documents, the July 3d, 1897, letter to Micajah Woods, and a certified copy of the minutes of the Roanoke Rapids Power Company meeting held in December, 1896, in the plaintiff's chambers in the Hotel Kensington, New York, proves that the plaintiff was sane and competent when the commitment papers say he was insane. My client is a lawyer, a law writer; he has shown his interests in law by writing this voluminous work, "The Lunacy Laws of the World." He proposes, as this record shows, to keep on in the course which he has begun, namely, writing law books. How damaging, how fatal would it be, I respectfully submit to this Court, for a law writer to start out in his professional career as a law writer in future with the old bug-bear, false stigma of *ex-lunacy* and *ex-incompetency* smirching his professional brow. He could not sell his books. No court would rely on his books. If his books were presented in court in the course of argument opposing counsel would say, in effect, could say certainly; "Your Honor, this is the work of an ex-lunatic; it is unworthy of consideration." No extended argument should be necessary on this point. The other side has struck at the very bread winning power of the plaintiff. They have struck at his profession. They have struck at his profession as a lawyer, to say nothing of his profession as a business man and a Captain of Industry, as shown by his being the chief stockholder in the flourishing town of Roanoke Rapids which was a wilderness when he went to it, a forest bordering on a cotton field. Therefore, we respectfully submit to the Court that is of the highest financial importance, professional importance, *bread winning* importance to my client that this false stigma of lunacy and incompetency be wiped from his professional brow, from his brow, his actual brow; this false stigma placed there by the law; it remains for the law to remove the same. If it is not done, I say it with profound respect and simply to save the Honorable Court from anything approaching a surprise—if we do not say this, this Honorable Court might think we would be satis-

fied with the return of my client's large property, and the Court would be justified in saying, "Why did you not say what you wanted while the case was being tried?" Therefore in all humility to this learned Court we say for the above reason only in order that the Court may know exactly what we must ask for, in order to regain all the rights of which our client has been *dispossessed* without due process of law, has been illegally dispossessed of, has been in fact robbed of *in due course of law*, but without due process of law, by the Supreme Court of New York. Therefore, we state that we desire the rehabilitation of our client as a member of the Bar of New York in which he has always been in good standing since the year 1885; that we wish his rehabilitation as a man of mental health, a man whose mind has never been diseased during the purview of this case at all events, and we shall respectfully ask from this Court instructions that the jury find upon the sanity of my plaintiff when he was arrested March 13, 1897—find whether he was sane or insane at that time on the record and on the exhibits aforesaid, and on the exhibits necessary to prove that in this case; that the jury be asked to find on that, as well as to find that the plaintiff is now sane on the record, on the judgment of the *Virginia Court* which decided that neither a Committee of the Person or the Estate was needed for this plaintiff November 6, 1901. We only ask your Honor that sufficient of this unprecedentedly voluminous and lengthy deposition be read to bring about "That happy issue out of our afflictions," or words to that effect; we do not wish to penalize this jury or presume on the patience of this learned Court. It will probably require a steamer trunk—I say this after making a most conservative estimate, nothing else than a steamer trunk can convey the already now over 170 exhibits in this case, and a steamer trunk so far as now at this writing will have to be carried into the United States District Court for the Southern District of New York when this case reaches a hearing, unless the contents thereof are taken out—the seal is broken first—and the contents taken out and put into a

series of suit cases or other boxes, valises or receptacles, and then sealed. I mention this so that the learned Court may know that I am as fully aware as anybody who has ever touched this case of the undesirability—among other reasons because it is utterly unnecessary to read *anything like* the whole of it—or anything like a tenth of it or a twentieth of it, (I allude, of course to this unprecedented, as regards length deposition), and I emphasize this fact so that the Court will know that I am unloading on it this trunk full of exhibits and library of volumes of my plaintiff's deposition. There will be from four to five or more *volumes*, large volumes; three already have been talked; we are now at work on the third, and the cross-examination has not yet begun. How many volumes that will take I know not. Therefore, I am conservative in saying that there will be *four* or *five* volumes in this library. I am perfectly willing, as chief counsel—after the Court and jury are satisfied as to the first, the crime in this case, that it is founded on fraud, that it is founded on conspiracy and perjury—nothing else, nothing less than that, nothing more stable than perjury, which perjury can be proved at the outset before reading the statement of facts in this case by simply turning to the statement of the petitioners in the commitment papers where they swear of their own knowledge as to certain (falsely alleged) acts and statements of this plaintiff "at his home"—and the commitment papers show that just before the signatures of Messrs. Winthrop Astor Chanler, Lewis Stuyvesant Chanler and Arthur Astor Carey—words to the following effect are in the printed form of the said commitment papers, namely, the undersigned (meaning the said three petitioners), or we, the undersigned—no, it is the undersigned, I think, have read the above statement (this statement contains the said false allegations regarding the plaintiff's falsely alleged acts and words at the *Merry Mills* aforesaid), and know the contents thereof, and the same is true of our own knowledge. (The word "our" should be omitted there, as I remember, and it should read as follows: Have read the above statement and

the same is true of *their* own knowledge, except—I shall begin that again—I shall begin this again: Have read the above statement—u-n-d-e-r-s-c-o-r-e—this—*and know the contents thereof, and the same is true of their own knowledge, except as to these statements* which are made on knowledge and belief, and as to *those* statements they believe them to be so—that is the gist of the warning which the law prescribes shall be given to every petitioner before he takes the grave responsibility of depriving a citizen of the United States or a sojourner therein of his liberty. There was no excuse for not knowing what they read or not appreciating it—they knew what they read—because this warning required that they knew it. After signing this iron-bound oath, Mr. Winthrop Chanler admits by inference that he perjured himself. He does this in the 1899 proceedings. His greed is his undoing in this instance. In that portion of the 1899 proceedings where a detailed list of my client's property was laid before the Commission, Winthrop Astor Chanler was questioned about my client's Virginia property, and the question was to this effect, "How about his Virginia property?" This, of course, including the *Merry Mills*, to which Winthrop Astor Chanler replied under oath, in effect, "I do not know anything about that; I have never see it." If he had never seen it, "had never seen it," he had never been in the *Merry Mills* when he swears he was in the *Merry Mills* in the deposition aforesaid, because not being a wizard, he could not see and hear alleged acts—words and acts—acts and words, see and hear alleged acts and words—of my plaintiff without being where the said acts and words were alleged to have taken place and been uttered. I informed my New York counsel at that time who conducted—by which I mean 1905—I should say at a later time,—who conducted the deposition, the cross-examination of Winthrop Astor Chanler, in his aforesaid deposition *de bene esse*, taken in November, 1905, because he was going to Europe; that in this deposition Winthrop Astor Chanler admits under cross-examination the truth of his statement aforesaid in the 1899 pro-

ceedings before the judge and jury, that "He had never seen it," namely the *Merry Mills* where he and Ex-Lieutenant Governor Lewis Stuyvesant Chanler, and Reverend Arthur Astor Carey, the Swedenborgian Divine, swore March 10th 1897, that they heard me say and do certain falsely alleged acts and words—words and acts—Mr. Winthrop Astor Chanler thereby admits he perjured himself. He was carefully examined, carefully cross-examined by my counsel and admitted that he knew what he was about when he swore *of his own knowledge* to things that he was not in a position to swear to. This deposition also showed that he was the only one of the petitioners that went to Virginia in 1897 and the inference is not far to seek that neither Ex-Lieutenant Governor Lewis Stuyvesant Chanler, nor Arthur Astor Carey had ever been at the Merry Mills, had ever been to the *Merry Mills;* they were there on the evidence; no evidence has been adduced, no claim is made by Winthrop Astor Chanler on the stand in this deposition aforesaid that Lewis Stuyvesant Chanler and Arthur Astor Carey were there, and he swore to this, to his said statements on their say so, on their evidence. He says no such thing; he says no such thing; he does not attempt to prove that they were there. The job would be too hard a one; the task would be too difficult on the evidence. We, therefore, respectfully submit to the Court that we have proved our allegation that this case is conceived in fraud and brought forth in corruption; that it is founded on fraud and perjury and conspiracy on the evidence. It won't take half an hour for my learned counsel to read from the certified copies of the *commitment papers*, and the deposition of Winthrop Astor Chanler, *de bene esse*, November, 1905 aforesaid, and prove him a perjurer, and Arthur Astor Carey, not forgetting Lewis Stuyvesant Chanler. This will give the Court the correct view of the standing before this Court of the parties to this issue. The plaintiff is an honest man on the record. The defendant and the people who put him there are crooked on the record. On the maxim "Fraud destroys everything" it should not take very long to

destroy the defendant's case now that we have proved the defendant's fraud. So soon as this is done I respectfully suggest that my learned counsel in New York bring in evidence the said letter to Micajah Woods of July 3rd, 1897, which is nothing more nor less than a brief drawn by my client with the language of same divorced from anything approaching a law library, in which brief he absolutely destroys the tissue of perjury and lies of the other side represented by the said commitment papers.

Next, we would respectfully suggest that our learned counsel submit to this learned court the said certified copy of the said minutes of the Roanoke Rapids Power Company where our client is appointed a co-member of an Executive Committee of a two-million-dollar property. Then, if this is not enough to show that he was sane, that my client was sane at the time of his commitment, and I freely admit the allegations are so atrocious, the allegation in the commitment papers, that it might be well to read a brief portion, brief excerpts from that portion of that volume of this library of deposition which replies to the perjuries of the Chanlers and Carey and Moses A. Starr, in the commitment papers and those portions of that volume of the library aforesaid of this deposition which replies to the perjuries of Doctors Flint and MacDonald on the stand in the 1899 proceedings, and in Doctor MacDonald's perjured sworn statement in evidence in those proceedings and Doctor Lyon's inaccuracies on the stand in the same proceedings; that when that is done I respectfully submit to this learned court and this jury that ample material will have been put forward to prove our two assertions, namely, that our client was sane and competent,—our two assertions that our client was sane and competent when he was accused of not being so by the perjured commitment papers aforesaid. Secondly, that our client has been sane ever since and was found sane and is sane, now found so by the decision of the Albemarle County Court of Albemarle County, Virginia, November 6th, 1901, in the proceedings brought by the late Cary Ruffin Randolph to

ascertain whether or not a committee of our client's person and estate should be appointed—our client having reappeared from an absence from the world, so to speak, of many months, and bearing the stigma of an escaped dangerous maniac.

I have taken this opportunity which will not be recurred to again, or referred to, to show this court and jury that it is the object, that it is my object to save this court and jury from an unnecessary work in this case, my client is doing the work now, he does the work so that when this deposition reaches New York this learned court and this jury will be saved from doing any work worthy of the name in comparison with the work that my client is now doing in dictating a library of deposition—thus: After the said documents seen by the court and jury and after the said excerpts from the said volumes from the said library of deposition spoken by my client on the stand have been read or heard at all events by this learned court and jury, then we may say that the court and jury can pronounce on this case, the court can pronounce and the jury render a verdict, because I am now examining my client by question and answer, going over the entire ground of the proceedings of 1899 as represented by the allegations on the stand of the Doctors Samuel B. Lyon, Medical Superintendent of "Bloomingdale," Austin Flint, Sr., and Carlos F. MacDonald, alleged experts in lunacy, in the pay of the other side; the witnesses of the other side, the professional witnesses of the other side; I am now doing that, and I propose to continue doing that until I have finished it. This will leave, I am frank to say, the other side without a leg to stand on. Of course, the other side cannot go back of the record or behind the record; they are limited to what they said in the record. So far, so good. I am putting every sentence that has not already—every sentence, in fact, that is not a repetition, every sentence in the statements aforesaid of the said doctors to my client and allowing him to answer them under oath. What the doctors have got to say or will have to say to what they have already said, in defense of what they have already said, I do not care to fatigue my

imagination by attempting to divine at this distance and at this time, but my client will now asseverate, will answer every allegation made on the stand or under oath by the said physicians, and what will be left to the other side to do with their physicians, with their said doctors, except to give them an opportunity to save their faces tc limp out of court—this does not apply to Doctor Samuel B. Lyon—I fail to see, and I am trying this case now with my client so thoroughly in order that there may be no trial of any length in New York, in order to save the court and jury. Now, if the procedure which I have respectfully mapped out, this or something akin to it, is followed, then I suggest, just to prove the bona fides of this deposition and the *raison d'etre* of this phenomenal lengthy deposition, we will prove the bona fides and absolute necessity of this extraordinary case, to make a deposition of extraordinary length and extraordinary detail, by offering to allow the other side to pick up any page in any one of the five or six or seven volumes of this library of deposition, and I will venture to say that there is not one page of any or probably of thousands of pages in the said library—I know that the library now contains over one thousand typewritten pages—I will venture to say that there is not one page of the thousands of pages in this, my plaintiff's deposition, which will not hold water before this learned court and this intelligent jury. It is possible that if they happen to turn up in this pack of cards, so to speak (I flag the Docs), a page devoted to purely scientific discussion, to purely psychological explanation, or purely theological explanation, that then more than one page will be needed in order to catch the drift of the plaintiff on the stand at that particular moment, because some of his sentences are necessarily rather long and some of them are almost a page in length.

I shall instruct my learned counsel (I now ask the stenographer that when he copies this portion of the deposition that he make one extra set of this address of mine to the court in order that at the outset of the case my counsel may use this address of mine in the court in order to put the court

au courant with the situation, and at the very outset, the very first words uttered in this case by my learned counsel, that the very first words of my counsel shall be to introduce to the court this address of mine now made to the court and jury as chief counsel, for the reason above stated)—I shall instruct my learned counsel to put before the court this proposed conduct of the case at the outset of the case in order to save it from the unutterable boredom and save the jury from the same of being penalized by having to read or have read to them this library containing the plaintiff's "tale of woe."

Mr. Duke: In reply to the long argument of Mr. John Armstrong Chaloner, chief counsel, acting for himself, in this matter, counsel for the defendant states that his objection following numerous objections, was to the irrelevancy and repetition of the testimony in this case; that he feels constrained to object to the long argument absolutely ungermane to the objection made by the learned chief counsel as not proper to be made at this time or this place. This is a deposition and not an argument, and if the argument had been addressed to the legal question, as to the relevancy of the testimony or the redundancy of it, no objection could be made by the counsel for the defendant, but this long and learned argument made by the counsel is in fact an address to the court and jury in part, and is also in part testimony, and is not proper. The learned counsel is a lawyer and should know and probably does, although he may have forgotten it, that his whole deposition, subject to objection, must be read, and that if he wants to save the court and jury from being penalized, with all respect counsel for the defendant suggests that he should stick to the main issues in the case, answer the quetions as briefly as possible, and not take up the time of the court and jury as has been done by dealing in absolutely extraneous matters. They desire to help the learned counsel in all proper ways, to expedite and speed this case, but they must confess that they feel in perfect despair at the length of the answers, the long repitition of evidence and continued strain of evidence as to which they can see no application.

and the argument should certainly not be addressed to the court in taking a deposition. That is all.

Mr. Chaloner: I reply to the learned counsel's remarks, to the learned remarks of the learned counsel on the other side, Judge Duke, that I have alréady explained that this being a deposition, and I not being—my client not being able to be present when it is read, that unless every possible point is covered up, he will suffer.

Mr. Duke: My boy, you are covering up too much.

Mr. Chaloner: He will die to that extent. He will be a dead cock in the pit. He cannot crow. The other side will be able to crow over his carcass, concerning that point at all events. So that in order that my client does not leave a stone unturned or a fraction of a stone unturned, I aid and abet my client and highly approve of his continuing to talk on this highly interesting topic to him, because it represents one million and five hundred thousand dollars in real money to him, and also his reputation as a sane man and a lawyer capable of practicing and charging a fee, what he wishes in his practice: and I have made this address to the learned court in order to show my passionate desire, as passionate as it is, as is my desire to win this case, as God is my witness, I am as passionately interested in saving the court and jury from being bored as I am in winning this case for my client, and to that worthy and more or less altruistic end I have addressed this court for that purpose to-day, and I have shown the way *out of the woods*, out of the tall timber of the pages of this library of volumes of deposition or blazing a trail to the light (I flag the Docs), by showing what portions of the deposition the court could agree—could decide to omit to read after I respectfully submit to the court allowing the other side to do as follows:

I respectfully submit the court may say to the other side: "Gentlemen of the Defense, you are at liberty to take any twenty pages, twenty different pages, they must be in any one of the volumes of this library of deposition, and if any one of these twenty pages do not bear out the assertion of the

chief counsel for the plaintiff, if any one of those twenty pages do not, as he calls it, "Hold water," then we will say that the chief counsel for the prosecution has not blazed a trail, as he has claimed, has not shown a way to save this court and this jury from being bored, by being forced to listen to this library, and we will say that the usual order of deposition must be maintained and the whole deposition must be read, but, if the twenty pages, twenty different pages which, be it remembered, are to be selected by the other side, by the oppcsition, by the defense, they can choose any twenty pages they like out of the thousands of pages of this library of volumes of deposition, if these twenty pages make good, if they prove that the chief counsel for the prosecution has made his case, then we will say to you, gentlemen of the opposition, that you will unnecessarily take up the time of this court and jury if anything further of this deposition should be read, because these are sample lots of the deposition. You have been given authority by this court to choose any twenty pages you like out of the thousands of this deposition and it is up to you gentlemen, to choose pages which will prove your assertion that this whole deposition should be read in order to show that the plaintiff's case is proved.

Adjourned to Thursday, December 21st, 1911, at 3 o'clock P. M.

Q. Mr. Chaloner, Dr. Lyon says, "Then he ceased to go out because he was physically unable to on account of unlikelihood." What have you to say to that?

Mr. Duke: This question and the answer thereto is excepted to as practically a repetition of the testimony heretofore given by the plaintiff in this case, and whilst excepting as well for its relevancy, counsel for the defendant desires to note an exception to this lengthy repetition of testimony heretofore taken, not only on the ground that it is a great expense, but a consumption of time and an unnecessary incumbrance of the record.

Mr. Chaloner: Replying as chief counsel to that, I will say that I am paying for this, or my estate is, and therefore, I am the only one that is entitled to criticize on the ground; and I have already explained why it is necessary for me to take up the statements of the alienists word for word.

A. I have this to say to that: The last word of that statement of Dr. Lyon's is palpable error on the part of the stenographer. It does not make sense, "on account of his unlikelihood." If he had said "of his *spinal trouble*," in place of "unlikelihood," he would have made a consistent statement. It would then have read "Then he ceased to go out because he was physically unable to on account of his spinal trouble." Dr. Lyon endorses my statement that I had trouble with my spine at that time by his remarks just quoted: "Then he ceased to go out because he was physically unable to."

MACDONALD, DR. CARLOS F., (CONNECTION WITH PLEASANTVILLE ASYLUM), 164-168.

The Witness, John Armstrong Chaloner, (continuing): Dr. Carlos F. MacDonald carefully concealed the fact that he is the proprietor, and was at that time, at all events, and is now, so far as I know to the contrary, of a private insane asylum owned by the brother of Joseph Hodges Choate, the late brother of Joseph Hodges Choate, and at that time owned by his widow and rented from his widow, so I understand on best authority, by Carlos F. MacDonald, at a place called Pleasantville, a few miles above White Plains on the same railroad. In this hospital he kept the first wife of Flagler, of defunct Standard Oil fame. This first wife of Flagler was put in there—put in there by Flagler and kept there at a terrific ransom, according to accounts in the press that I saw while in "Bloomingdale," in the papers. It was thousands a year—I would be afraid to say how many—but it was more like fifteen thousand dollars than it was five; I know that it impressed me, that it made the amount I was being forced to pay in "Bloomingdale" seem most insignifi-

cant. It aroused my suspicion, the size of this ransom, so to speak; how any woman could spend such a sum of money unless she had a quartet from the Metropolitan Opera to sing to her once a week, I fail to see. Later on I saw by the papers, to my horror, that Dr. MacDonald had been appointed the committee of her person and estate under an act of the Supreme Court of New York—under an order of the Supreme Court of New York—and that was the last I heard of the lady. I refer to my law work, "Chaloner on Lunacy," if I remember rightly I have cited the instance there of where it is not permitted by English law for the proprietor of a private insane asylum to be the committee of a lunatic, for obvious reasons; and if I remember rightly, I have also cited in the same book an instance of where a New York Supreme Court judge recently, in the last few years declined to appoint—stated on the Bench—from the Bench—that he would decline to appoint the keeper of an insane asylum as committee of the person and estate of a person who had. This extraordinary state of affairs as regards the insane asylum at Pleasantville of Dr. Carlos F. MacDonald excited my interest for the two reasons given: The enormous sum the lady paid and the fact that Carlos F. MacDonald was given the ultimate say so as regards her release while he was being paid, say, fifteen thousand dollars a year which he got, he was bribed to hold her there and was bribed to stultify his honorable position as the guardian of her person and estate. It is unnecessary to expatiate on the two conditions being totally conflicting. I looked into this question of the wife of Flagler, first wife, and found it was common knowledge that he had divorced his first wife and had then practically bribed the legislature of Florida. bribed it indirectly—I don't say he bought them—but he did a great deal for Florida, and after he had done a great deal for Florida it all redounded to his own profit in the shape of his hotels—he then approached the legislature and got a bill passed by which insanity was a cause for divorce in the State of Florida. He then, having had his wife declared insane, and landed in the safe clutches

of Dr. Carlos F. MacDonald, Mr. Flagler then married a young woman, and at St. Augustine to-day the cabmen will recite the above state of affairs to the wonderment of their "fares," so I have been told on good authority. In other words, it is common talk in St. Augustine, or some such town in Florida where the Flaglers had lived, Mr. and Mrs. Flagler No. 1, of the spiriting-away of Mrs. Flagler and the remarriage of her ex-husband. I give this to show what kind of a man Carlos F. MacDonald is and how his interests are all in favor of keeping up these crooked, illegal lunacy laws in New York State and how his very bread and butter, as above described, depends upon imprisoning for life any falsely alleged lunatic who dares to say that he will "show up" the state of the lunacy law in New York when he gets out of limbo—as I did, as I steadily stated for years while at "Bloomingdale." This all gives some light on Dr. Carlos F. Macdonald's interest in finding me *insane* and incompetent; and the jury will see from the language he used—the extravagant language he used—in the way of stating I am the most typical case of paranoia he has ever seen, or at all events, as typical a case, and that if he wanted to get a case to show to his class, to his clinic, he could not get a more typical one than myself, and that, in the teeth of my record since then and while at "Bloomingdale," all the writing I did, and since then to mention only the book, "Chaloner on Lunacy," which has received, as aforesaid, encomiums of the professional Reviews in law, is rather droll; particularly as, in the natural progress of the disease,—this statement having been made in 1899, thirteen years ago come next Spring,—I would, as any physician, honest and intelligent, will say, be now in a lamentable condition, practically drooling at the mouth and an utter mental wreck, incapable of expressing a sentence that contains sense. He took this big risk, did MacDonald, in the fond hope that I never would escape, knowing that if I did escape, so far as he was concerned, "Othello's occupation might be gone." At all events, he knew that a lot of unwelcome light would be thrown on dark places of lunacy legis-

lation, providing I got out of "Blcomingdale" and "made good."

Mr. Duke: All of the foregoing answer is excepted to as plainly irrelevant.

OSBORNE & HESS, PLAINTIFF'S CONNECTION WITH, 377-381.

(From Volume IV, Cross-Examination by Judge R. T. W. Duke, of Counsel for Defendant in Error, Beginning Page 376.)

Q. Will you kindly inform me when that suit was instituted?

A. As I remember, on or about May, 1904.

Q. I will find it for you if you want, so as to get it accurate. A process issued the 5th of April, 1904; that is close enough though?

A. Yes.

Q. This suit has been pending, as I understand it, from that time to this and undetermined. Will you please inform me who was your original counsel in that suit?

A. Osborne & Hess, as I remember it, without looking at the record; James W. Osborne, former Assistant District Attorney of New York, was of that firm, head of that firm, of Osborne & Hess.

Q. I note from the record that the summons was signed by Osborne & Hess, issued on the 5th of April, 1904, and that the complaint sets out that the complaint was filed by Leo G. Rosenblatt, Attorney. Please state if Mr. James W. Osborne—Osborne & Hess were your attorneys when the complaint was filed?

(Question read.)

A. Not when the complaint was filed, no; they were not then in my employ, they were in my employ when the summons was served, but they were not in my employ when the complaint was filed. Leo G. Rosenblatt was then my New

York counsel vice James W. Osborne, of Osborne & Hess, no longer in my employ.

Q. Will you please, Mr. Chaloner, state why Messrs. Osborne & Hess failed to appear to file the complaint?

A. Yes. I don't like to do this, because it is—

Q. Oh, we all have that sort of feeling.

A. Between—a privilege between counsel and client; I think it is privileged. Briefly, well, call it a—well, I, I suppose I must make a clean breast of it. It does not hurt Mr. Osborne nor me to state it. It was briefly this: I met Mr. Osborne in Alexandria and this, of course, was years ago, and I am not absolutely clinched in the dates, but, as I remember it, it was before the serving of summonses; I am quite sure of that; and I brought down with me in my saddle-bags and mail bags my voluminous brief and appendix which was not printed then and which amounts to about thirteen hundred pages—they were then typewritten—and of course took up a tremendous amount of space; I carried these bags with me and showed them—and spoke from them to Mr. Osborne in Alexandria; and we had a conference there of several hours. We argued the case and he was in favor of a State Court, as I remember it, of State jurisdiction, as every other lawyer, New York lawyer, that I have had in this case, practically almost every one, if not every one, and I have had a good many lawyers. I told Mr. Osborne that, as I had written the brief I wished to have my name at the foot thereof. He readily acquiesced in that. I said in effect, you will have the kudos, the fame, of fighting this brief in court, and I certainly deserve the O. K. of having written it; I stated, your name will appear at the foot of the brief, but I want to have it understood that I wrote the brief and was the author of the brief, which is the fact. Mr. Osborne took the brief with him to New York, the typewritten brief, and some weeks later notified me that he would—or sometime later—notified me that he would take the case. Later, then, the summons was served—later than that, sometime after that he notified me, he wrote me a letter saying in

effect: "I have always been my own physician in every case that I have taken in New York since I was admitted to the Bar, in 1885, and my name alone must appear at the foot of this brief." He wrote this letter, not in the nature of a warning or an indication of having any desire to recede from the original agreement. I was surprised at this and wrote him in effect very friendly, but very much concerned. Of course, Mr. Osborne was a powerful man, powerful pleader and a powerful lawyer and was, without a doubt, one of the most powerful cross-examiners in the United States, and I wanted him in my case and wanted him badly. I was extremely sorry of the cloud which loomed on the horizon by Mr. Osborne's flat-footed statement, so I wrote earnestly and really plead in my letter, earnestly and gently. I did not wish to break with him at all—I wanted him—nothing in the world would have induced me to break with him—break with him—I wanted him more than any man in New York and exhorted him to remember our agreement and I did not make any accusation whatever—nothing personal at all; I stated this is entirely in contravention of our agreement, namely, that my name was to appear at the foot of the brief, under the agreement, and that he was to have the kudos of having argued the case which was his line; that "you are not a law writer," words to that effect; that your forte is summing-up, summing-up before a jury"; I said to him also that "you are an orator; you don't want to make a reputation as a law writer," words to that effect; that I did not wish to leave a stone unturned in my effort for his arguing of the case, in his arguing of the case, in order to show him he would gain by sticking to the agreement; a long letter it was, a very long letter, a passionate appeal to him to stand by the agreement; I *did* want him to stay in the case. He wrote back briefly ignoring my argument absolutely and flat-footedly, saying he was very sorry that he would have to retire from the case; words to that effect. I was amazed, but took what the Fates bestowed—(I flag the Docs)—I am speaking metaphorically—and moved on.

ROSENBLATT, LEO G., PLAINTIFF'S CONNECTION WITH, 381-391.

(From Volume IV, Cross-Examination by Judge R. T. W. Duke, of Counsel for Defendant in Error, Beginning Page 376.)

* * * I did thereupon—I got Mr. Rosenblatt to take the case and he, Mr. Rosenblatt, having come into my legal life by a letter concerning Maxwell, W. G., asking me if I could not do something to relieve Maxwell, he was so impoverished, he was so hard-up, he would "strike" anybody for a quarter—Maxwell did have a magnificent brain, and I have said that all along in the deposition, and the consequence was that Mr. Rosenblatt plead so eloquently, for him, that I considered it. He wrote like a learned lawyer and having had this previous correspondence with Rosenblatt I held him as a reserve on Osborne. I had had such a bitter experience with lawyers that, although, I had no reason to suppose that Osborne would not stand by me,—I always like to have a lawyer in reserve on another lawyer—so before Osborne could move to show he was going to back out I had Rosenblatt in mind to move in case he did, and when he did back out, I accepted his resignation, and wired Rosenblatt to step right in his shoes, and there was not a delay of twenty-four hours, and in this way could be the reserve on Osborne without doing anything in the slightest degree contrary to professional or legal etiquette, concerning which Mr. Rosenblatt was exceedingly punctilious; he was with me in regard to Maxwell and had been thrown with me in suggesting Mr. Julian M. Isaacs; I had written to Mr. Rosenblatt, having written to him about Maxwell, and asked him if he could furnish me with authorities to support my points in my brief, as I stated on the direct, and Rosenblatt said he could not do it, but recommended Mr. Isaacs. This correspondence had gone on about two years previous. It started in 1903, about eighteen months previous, so that when Osborne dropped out about eighteen months later, I was in a position to get Mr. Rosenblatt to step right in without in any way acting contrary to etiquette, because

Rosenblatt did not come into the case until Osborne went out. So that, I think, Judge Duke, that answers your question.

Q. Yes, sir, fully. Mr. Chaloner, is Mr. Rosenblatt still your counsel in this case?

A. He is not, sir.

Q. Will you please state why he left the case?

A. Readily. It was thus: Mr. Rosenblatt having joined my case, as already described, wrote a most scholarly complaint, most scholarly; I was thoroughly satisfied with it and congratulated myself on having met a man with such a command of English and with such a power for concentration on facts; he boiled down the facts in that complaint most admirably. In the summer of 1904 and possibly '05, Mr. Rosenblatt and I entered into a long correspondence, instituted by him, regarding the avenue of attack. He was passionately desirous of State jurisdiction as was Osborne, as I have already said, and I did argue with Mr. Rosenblatt for months and months and months—voluminous letters—I did not keep a letter book in those days, I did not have the money to have a secretary—yes, I take that back, I remember I had a letter book, I remember that; my letter-book can show the letters I wrote to Mr. Rosenblatt—something terrific, sometimes fifteen or twenty pages long, because they were legal questions, as to which he suggested State jurisdiction, / Federal; and I had to coach Rosenblatt for months and months to get it into his head that I was absolutely it, again. I was amazed at this, a man of Rosenblatt's legal jurisdiction and that I would be a fool to go back to State jurisdiction, for the simple reason I would have to put my head in the lion's mouth again and go back to New York again. I was amazed at this, a man of Rosenblatt's legal learning, but I felt that it was because he lived in New York and New York lawyers—I have never heard of a New York lawyer—I have never heard of a New York lawyer going out of the New York State court—I don't remember ever hearing of a New York lawyer going into the Federal

Court unless the case was already in there, or he was invited in it; the idea seems to be totally foreign to their minds; they are absolutely possessed with the idea that the New York State court, outside of course and excepting the United States Supreme Court—the United States Supreme Court only as an Appellate Division of New York—is the highest court of New York. After—well, after months of earnest arguing, argument with him, I got Mr. Rosenblatt finally to admit I was right, and having put him to school, so to speak, and drilling him and coaching him, he saw I was right. He then removed the objection and set to work and worked vigorously on the case. In 1905 everything was all ready. He had seen my brief and that was printed in 1905, early in 1905—he saw the brief and appendix of *Chaloner* v. *Sherman* and had approved of it—that is, he never made any attempt to change any of the points—twenty-two points—or argument or anything else; he accepted my brief and argument-in-writing. This was a form of argument which I discovered in a North Carolina case, away back about one hundred years ago, the only case I ever saw in my life. I decided to put the argument-in-writing so in case of my death it would be fought as I desired it to be fought—I would do my own arguing. Mr. Rosenblatt agreed to do this and he started for Europe—he notified me in the Fall of 1905—I mean, the late Summer of 1905—and said he was going to Europe for a few weeks for a vacation and the case was due to come up in the next few weeks, and I was very much concerned about his leaving the country; he was not to be back until late September or the first part of October—I was very much concerned regarding his leaving the country at that time in case anything should turn up—I had no confidence in the other side; they were liable to be tricky and take advantage of any chance they could, and I wanted to have my lawyer on the spot or near at the time of battle. Mr. Rosenblatt was very gentlemanly about this; I had nothing to do but write one letter to him suggesting this when he said he would get a substitute in his place and pay him out

of his own fee. I was extremely touched by this and would not listen to anything of the sort, but insisted that I would pay him, his substitute, the same fee that I paid Mr. Rosenblatt. Mr. Rosenblatt thanked me and went to Europe. The man he selected was Mr. Kohler, I believe; he practiced in the Federal Court in connection with Chinese Exclusion cases; he was employed, as I understand it, as assistant counsel for the Government in that case or cases; I am under that impression, very strongly under that impression I was very glad to have Mr. Kohler in the case and he read the brief and wrote me a complimentary letter and said he was impressed with the profundity of my argument and was very glad he was in the case after he had read a sufficient amount of my argument to be satisfied with it; when he wrote that letter he had not read the entire brief or the whole argumeent, but had read the main points. Rosenblatt comes back at the end of his trip, say, two months, and to my amazement informs me that the agreement which he made with me must be rescinded, namely, the agreement that the brief and argument-in-writing must go in—that was a condition precedent to his being retained in the case—as to said brief and argument-in-writing and appendix—to my amazement he said it could not go in; that the whole statement of facts had to be cut out and nothing but the law could go in; that was very complimentary to me as a lawyer. Whatever hostility Rosenblatt had to my brief as to questions of fact it was not on the law. It did not take any magic to discover what was the matter with Mr. Rosenblatt, Mr. Kohler had an attack of "cold feet"—his name was Kohler and his feet rhymed with it. He was afraid that the big interests that I attacked, those prominent financial pillars of New York, he was afraid of them, and he imagined that it would reflect on him the animosity of those powerful parties in New York society, finance and law, whom I held up for what they had done in my statement of fact and had grouped under the head of "The Forty Thieves of Bloomingdale" in "Four Years Behind the Bars." I don't remember that I called them

"The Forty Thieves" in the statement of fact, but if I did I have no apologies for having done so. Mr. Rosenblatt was so utterly inconsistent he simply grovelled and ate his own agreement and backed right straight out and left me in the lurch and notified me when he got back—anyway, in November he let me know—it was right on the edge when the case was coming on, within a few weeks. Well, I told him, under the circumstances I would not allow him to break his agreement with me; I would not listen to such a thing; I told him that under no conceivable concatenation of circumstances or chain of events would I budge one inch, would I recede one fraction, from my position as I had outlined it after years of work in my brief and appendix. I said so very politely and urgently; I urged him to stand by his guns as I had with James W. Osborne. I had gone to the Jews because the Gentiles had played me such tricks; I was disgusted with the Gentiles and I rushed off to the Jews. No man has got a more Jew name than Rosenblatt. When I repeated his name to a leading West Virginia lawyer, he said "Egad! that sounds like the blast of the trumpet with which Joshua blew down the walls of Jericho." I said, "By jove, you're right." I have no prejudice against the Jews and the Semitic race. How could I when I went to such names as Rosenblatt, Kohler and a flock of Franks, Newman, Newgass, not forgetting Isaacs—I had a brace of Isaacs at that time. I have no quarrel with sons of Abraham. I think Abraham—founded on the description of Abraham in the Book of Genesis—is one of the most knightly characters, one of the most chivalric characters in all literature and romance compares with the description of Abraham—or at least one of the descriptions that most closely compares therewith—is Sir Walter Scott's "Ivanhoe." I just mention this to show that I am not talking through my hat when I say that I admire the Ancient Jews. Abraham was moving through the country after he left the land of the Chaldees, according to the order of the Almighty, and he with his retainers—I think it is a great mistake that they are mentioned in the Scriptures

as servants, because all those men were armed-retainers, they would have been called retainers in the old feudal days—their lives were at the behest of Abraham, as he was journeying through the country at the head of his troup of retainers; there was a battle of several Kings going on—Kings they are called in the Bible—I have forgotten the names, one of them is outlandish—I won't even attempt to pronounce it, I have forgotten how, I know how it looks, but I can't spell it—the other, his name is Tidal, "King of Nations." I would like it understood that this was a big fight. The aforesaid Tidal was "King of Nations" and later on while the Kings were fighting there Abraham turned the tide of battle by joining in with his retainers, mildly called "servants" in the translation, and the side he joined—I have forgotten now which side it was—was victorious, with Abraham's servants being thrown in the scale. At the end of this fight, this battle. Abraham—here is the point I am getting at—the Jews in those days were far different from the Jews nowadays. When Abraham, when he was offered, of course, the lion's share of the spoil for having saved the day—for having saved the day for, say, a brace of kings, there were a lot of them fighting there, half a dozen kings—it was a real poker-hand of kings—there were more than four kings there—as I remember—when Abraham's royal ally offered him the lion's share of the spoil, Abraham declined it emphatically, saying, in effect, "I won't take so much as a shoe string of the spoils for if I did then the King would say, I have made Abraham rich." That struck me as the most involved psychological introspection upon the part of a supposedly more or less simply agricultural individual or rather not agricultural—that is a slip Mr. Stenographer, please—leave it there—I mean, a patriarchal proprietor of flocks and herds—Abraham, like a patriarch, showed such delicacy of feeling and such fluent and psychological reasoning—that it at once lifted a great veil to me.

I mention all this to show that I have the greatest admiration for the Jewish character as depicted in the Old

Testament. And that is why, after Osborne had served me this turn, that I went to Rosenblatt, and Rosenblatt would have stuck all right, but Kohler scared him out; Kohler had big influence with Rosenblatt, Kohler having position in the court; he worked or practiced in the Federal Court—he was a practitioner in the Federal Court—and Rosenblatt was a practitioner in the State Court, and Rosenblatt therefore was under Kohler's influence and he quit. He gave me the ultimatum, that it could not go in. He gave no excuse for eating his own words and going back on me and not standing by me and taking the brief which he had accepted years ago, 1904 to nearly 1906, within two months of 1906—he eats his own words and gave no excuse for it, and simply let it go at that, the same as James W. Osborne.

Well, I said, the Jews are as bad as the Gentiles in New York, so out of my brief and case, or rather out of my case, flocked Mr. Rosenblatt, as had Mr. Osborne, and I was left solus—alone.

I believe, Judge Duke, that answers your question.

Q. Who succeeded Mr. Rosenblatt?

A. Mr. William Dyke Reed, who is still with me; and Mr. Rosenblatt was very polite and gentlemanly about allowing Mr. William Dyke Reed to become my attorney of record. Mr. Rosenblatt resigned as attorney of record and allowed Mr. William Dyke Reed to become attorney of record without demanding payment of his fee. The etiquette is and the law is in New York—and I believe it is so elsewhere—that the attorney of record—when he is dismissed from the case—that he cannot be dismissed from the case or made to retire from it without being paid, and the agreement which I had with all my counsel was, under force of circumstances, that they were not to be paid until my case was decided one way or the other. I have nothing to say about Mr. Rosenblatt in the way of money matters; he has been most delicate and generous; he was extremely delicate in money matters; there is nothing objectionable about Mr. Rosenblatt as regards money matters; he is generous, I may say knightly in that matter,

absolutely chivalrous and I regretted having him retire from the case; he was extremely nice. Again when he withdrew, afterwards, he withdrew all questions of money claims at the time and allowed Mr. Reed to step in as attorney of record.

REED, WILLIAM D., PLAINTIFF'S CONNECTION WITH, 391.

(From Volume IV, Cross-Examination by Judge R. T. W. Duke, of Counsel for Defendant in Error, Beginning Page 376.)

Mr. Reed came to me in this way: He wrote to me after Osborne's firm broke up—Hess died, as I remember it, and Osborne then reformed his firm and had his brother in with him from North Carolina, and there was a general shifting of forces in his large law office, and Mr. Reed went out on his own hook, and then wrote me and said he was familiar with my brief and would take it and familiarize himself with it, and he did so, and he is still my attorney of record and in my employ.

Q. Will you please state who is associated now with Mr. Reed in this case?

A. The Honorable Frederick A. Ware, in New York, and—I give them in their order—

* * * * * * *

"SELF-THREADER" AND "PATENT PAVEMENT" PATENTS, 130-135.

Having made this voluminous explanation, the jury can understand that I did not escape until I was forced to escape by the unfortunate decision of Mr. H. H. Frost in my regard aforesaid. I was willing to suffer anything short of death; I was willing to suffer the risk of death, the daily risk of it and nightly risk of it, of the torment of "Bloomingdale," of the pain in my spine brought on and continued by my presence in "Bloomingdale," the deprivation of everything that makes life worth living, my living in a hell on earth, cut off from my property, from my budding affairs which held out

another fortune to me besides my own, as has been shown on the record, by the letters of Albert Legg, I received an offer, as one of his letters shows, a bona fide offer of in round numbers, five hundred thousand pounds—$2,500,000—for my *Self-Threading Sewing Machine Company*, which took a prize or the highest award at the World's Fair at Chicago, and for which forty thousand dollars' worth of orders were booked during that Fair's duration, besides my patent pavement which I patented myself, which also received the highest award at the said Fair, and for which I received an offer from the Mayor and Syndic of Marseilles, Frances, for the paving, ultimate paving of the City of Marseilles, if my paving proved durable, a fact which had already been proved by its having been laid down in England for years in a private place where the public would not know it, or see it, but where it had steam rollers and heavy steam English machinery, farm machinery pass over it daily. The business men of the jury will readily recognize the parental interest and care that I would naturally feel in a patent of which I was the controlling stockholder, a one hundred thousand dollar patent, paid-up, and another patent in which I had put thousands of dollars for patent rights—all in a lapse of years, certainly twenty-five thousand dollars at a very conservative estimate for the patent rights, without which patent I would never have received the Marseilles order, which I did, so that the jury will see that I showed business acumen, judgment and foresight in investing my money in patent rights, because I would have gotten a return from them had I been able to close the Marseilles deal; the jury will readily recognize the parental care I had for my two said business infants, one the offspring of my business judgment—the sewing machine attachment—and the other the off-spring of my very brain, a patent which I had myself invented; the jury will readily recognize the parental agony (I flag the Docs) from a business point of view I suffered, and from being separated from these children of mine (I flag the Docs), these business products of my brain, and business judgment whom

I knew, whom I daily knew when I was in "Bloomingdale," were being starved to death, were dying, because like real people, live children, they only had a limited number of years to live, seventeen years being the life of a patent; I need not expatiate to the jury that I went through as a business man, and as an inventor, *agonies* and that is not too strong a word, I assure the jury, under oath, for what I suffered from this business agony, this business tragedy—it is nothing else. I have refrained from touching on this before in this long deposition—I did not want to appear to work on the sentiments or emotion of the jury, and I do not want to now, but it is absolutely necessary for me to show that I only escaped from "Bloomingdale" because I had to, it is necessary for me to show that, unless I am willing to allow my reputation as a man of honor to be smirched, and I say, and my record stands for it, that honor is more with me than money or success or anything else, and I would rather have poverty and an honorable name than riches and rascality. My various acts and utterances on paper in every publication prove that to any honest and intelligent mind, and it is a very dear and precious thing to me as a man of honor; it is the dearest thing to me on God's earth; it is dearer to me than the fact that I am an American citizen; it is the dearest possession that I have got that I have an unsmirched honor, unsmirched by the record, unsmirched *on* the record, proved to be unsmirched on the record of the fifty years coming the 10th of October, 1912; for that reason I want the jury thoroughly to understand the temptation I was under to compromise if the dollar cut any actual ice in my scheme of existence when opposed to what I thought was right; the jury will remember that my patents were dying daily when I was thrown into "Bloomingdale"; the jury will remember that I was offered this Marseilles paving, the paving of a certain portion of the streets of Marseilles before I was hurled into "Bloomingdale," and within a year after my being lodged in that den of vice and iniquity—its proprietors are vicious; I do not mean that vice takes place in "Bloom-

ingdale"—are vicious, and what they own is vicious thereby; they are proprietors of a den of iniquity because *they* are iniquitous themselves on the record in turning me into a galley slave, and in robbing me of thousands of dollars a year as aforesaid—within a year after waking up and finding myself in a mad-house for life on a perjured charge of lunacy, the sewing machine attachment, that sewing machine adjustment (owned by the said Self-Threading Sewing Machine Company) reached fruition, and was adjusted to the Singer machine, as aforesaid, which fulfilled the conditions offered me, laid down to me by the London capitalists, that they would give me one hundred and fifty thousand dollars for the rights of the British Isles, possibly the British colonies also thrown in; the jury will see the terrible temptation I was under from the very day I got into "Bloomingdale" to get out in any way I could, even at the price of "hush up" aforesaid, offered to me by the Ambassador of the other side; nothing but a sense of duty—iron-bound and rock-ribbed—held me in that cell when the offer was made to me that I could get out of it: the doors would swing open, swing open with the knowledge of Dr. Lyon, but quietly; not to the knowledge of the press, not to the knowledge of the medical profession; there was a seal to be placed on my lips forever—hideous as that proposition was, it was made to me, and nothing, I respectfully submit to this court and jury, but a certainly working sense of duty, a mobilized sense of duty, enabled me to resist that offer; that offer made years before my escape; even after I was given the privilege of walking about, I did not escape until eighteen calendar months, there or thereabouts, to be absolutely exact, seventeen months; I was given permission to walk about alone in June, there or thereabouts, 1899, and I escaped Thanksgiving Eve, 1900, seventeen months later.

TESTIMONY OF DRS. FLINT AND MACDONALD DISPROVED BY PLAINTIFF, 168-187, 254-258.

Q. Mr. Chaloner, skipping on down to page 120 in the Appendix to the brief, Appendix in *Chaloner* v. *Sherman*, which contains a printed copy of the certified proceedings of 1899, Dr. Macdonald, under cross-examination says, relative to his visit to you of March 16, 1898, in "Bloomingdale," his visit with Dr. Flint: "He received us cordially and immediately began, as he said, to explain his case." What have you to say to that, sir?

A. I would reply to that, that that is all proof in itself of my complete sanity and competency. I was natural and polite and being in such an equivocal position, in a madhouse cell, it was incumbent upon me to "explain my case," and I did so. Anyone that knows anything about lunatics knows that they are suspicious and secretive, always so, practically speaking, if they consider there is anything approaching a conspiracy against them. That is my experience with bona fide lunatics at "Bloomingdale." I made regular studies of lunatics while in "Bloomingdale," and I find that secretiveness is a marked form of insanity; of course, not by itself, but with other indications of insanity. All *business men* must be secretive or their business will be not of long duration; their rivals will get their good points and "eat them up."

Q. Previous to that, Mr. Chaloner, the sentence previous to that, Dr. Macdonald says: "We informed Mr. Chaloner who we were and the purpose of our visit; that we were there to examine him as to his mental condition." What have you to say to that?

A. That I have already replied to and stated that they entered with a lie on their lips, Flint and Macdonald, as they told me in effect, that they did not represent anybody, I having put that question to them out of self-preservation to know that they did not represent the other side—did not come, as it turned out they did come—as spies. They both

promptly replied and said they represented nobody, but had dropped in at the request of a friend of mine, mentioning him, to see how I was.

Q. Dr. Macdonald then says: "He said he was the victim of a gigantic conspiracy on the part of his relatives who were jealous of his great mental and physical superiority to theirs." What have you to say to that?

A. That endorses what I said on a previous day in this deposition, that Carlos F. Macdonald had the unqualified gall and mendacity to take the words out of Dr. Austin Flint's mouth, Austin Flint, Sr.'s mouth, and put them in mine,—the words which Dr. Austin Flint, Sr., had spoken after copying the specimen of my literary output which I gave him. This has been fully described, so I shall dismiss it with the remark that Dr. Flint said, on reading my verse, "your family put you in here because they were jealous of you—*because they were jealous of you;* and here Macdonald has the lack of principle and audacity to say *that I* said what Dr. Flint had said—evidently Dr. Flint had put the idea—Dr. Flint's words had put the idea into Macdonald's head about this jealousy. He thought it was a good idea provided it was "put on" the proper party to serve his case, so he put the words in my mouth instead of in Dr. Flint's, a most scandalous, rascally procedure.

Q. Dr. Macdonald goes on: "The other conspirators being Joseph H. Choate, Elbridge T. Gerry, Cornelius Bliss, Judge Beekman and several others whom he named; that they had subsidized the State and National governments which were arrayed against him; that his case was thoroughly prepared." What have you to say to that?

A. In the first place, I never mentioned Judge Beekman—I never mentioned his name. As regards Choate, Gerry and Bliss, I have already explained how they were conspirators *indirectly*, but conspirators nevertheless, conspirators against the New York public by being members of the "Forty Thieves of 'Bloomingdale,'" members of that celebrated band, that notorious banditti. This poppy-cock about

the subsidizing of the State and National governments "which were arrayed against me" I have already torn to pieces on a previous day.

Q. The record goes on:

> "Q. He named Mr. Choate and Mr. Gerry and others?"
>
> "A. He named, I think, the most of them, who were members of the Board of Governors of the New York City Hospital, as that is a branch—of which 'Bloomingdale' is a branch."
>
> "Q. That is the reason they were selected?"
>
> "A. Yes, sir."

What have you to say to that?

A. I reply to that, that that is a marvelous statement from the fact that it is true. It corroborates the truth of my statement why I considered and denounced Choate, Gerry and Bliss, *et id hoc genus omne*, because, they *were* "members of the Board of Governors of the New York City Hospital of which Bloomingdale' is a branch." This endorses everything I have said on that subject, and gives me legal reason for denouncing them as banditti, and this is further "rubbed in" by being repeated, in the following words, "That is the reason they were selected?" Answer: "Yes, sir." Showing that I "selected" them because they *were* members of the Board of Governors of the institution which held me in durance vile.

Q. The next statement of Dr. Macdonald's is:

> "That they had subsidized the State and National Governments which were arrayed against him; that his case was thoroughly prepared and would be taken up by the court just as soon as the Spanish-American war scare was over; that he would expose President McKinley's 'bogus prestige,' and in this he would be backed up by six million five hundred 'Silverites.' He then

called our attention to a large stack of daily newspapers—files of the New York and Virginia newspapers and other papers, which were piled up on the floor in one corner of his bed room—a large amount of daily papers which he had saved."

What have you to say to that?

A. I would reply to that that I have already answered this absurd hodge-podge, and will content myself by saying that the expression, "bogus prestige" did not apply to President McKinley, but to Joseph H. Choate, his "bogus prestige" of everything that a lawyer should be. As I have said, there is not a word of truth in the statement about the Spanish American scare," and that he would be "backed up by six million five hundred thousand 'Silverites.'" I have explained all that on a previous day and this remark about "bogus prestige" endorses my explanation of it on a previous day.

Q. Dr. Macdonald goes on in reply to the following question:

"Q. What did he say about it?"

"A. He said, 'those contain my case.' He said he had edited these papers from day to day as published, 'blue-penciled all the lies' and that he would show them all up in due time. These papers were blue-penciled all over—had blue pencil marks all over them. 'He would show them all up in due time,' he said."

What have you to say to that?

A. That is exactly endorsed, I would reply, by my explanation of the mendacious statement that "I edited" the newspapers, words to that effect, which have been placed in my mouth on this subject. I did blue pencil "lies" which I found too frequently in the daily press, and this is probably true, 'these papers were blue penciled all over—had blue pencil marks all over them," endorsing my statement that I wrote notes in blue pencil on the margin of the papers, of the seven

daily papers, I read whenever I found anything worthy of note, either worthy on account of its goodness or badness. And "he would show them all up in due time he said," had reference, as I remember it, if I made that statement—I might have made it, because I have now made good by founding my quarterly newspaper called "The Confederacy and Solid South," for which I have just received the allowance of its trademarked title from the U. S. Patent Office in Washington—that is, so to speak, a patented title, and in that paper, as I have said on a previous day in this deposition, I shall show up the lies in the daily press; not only where they lie about me, where the lies are on my affairs, but any lies. I propose to be the fool-killer and lie nailer. As I have said before, I am simply now making good thirteen years later what I said I would do—if I said it—years ago.

Q. Dr. Macdonald also says:

> "He also said that he was an expert in the art of boxing, in pool playing and in pistol shooting; that he could hit with a pistol two out of three apples thrown in the air every time; also that he was an expert in mental strain and in mental impression, depression and exaltation; that was his exact language. That he excelled in mental and physical power, and that he was 'a mental gladiator, the John L. Sullivan in debate'; that in mental contests or debate he not only had never failed to hold his own, but had invariably 'knocked out' his opponent."

What have you to say to that?

A. That has been largely replied to, and I shall content myself by simply saying that in this statement of mine that I excelled in "physical power"—"excelled in physical power," is supported by the statement in the New York morning "Sun" of on or about October 14th, 1897, in which the said interview with Dr. S. B. Lyon took place, in which Dr. Lyon said, "I would not call Mr. Chaloner insane. I do not know

what is the matter with him, but I would not call him insane," words to that strict effect. In this said article the "Sun" young man goes on to say, concerning my humble self, "he is possessed of considerable physical strength." Since the "Sun" has always been hostile to me and does not hesitate to lie about me when it suits its purpose,—as I shall explain in a moment, it is reasonable to presume that this statement that I "possessed considerable physical strength," or words to that effect, was a matter of more or less common knowledge in New York, and therefore when I stated—in taking an account of stock, so to speak, of my mental and physical assets as everybody has to do when being examined by experts in lunacy, a question of one's mental and physical health—and therefore, when I stated that "I excelled in physical power," I respectfully submit that the statement in the New York "Sun" aforesaid, bears that statement out. The lies of the New York "Sun" are well indicated by the following instance: In my recent altercation with the Princess Pierre Troubetzskoy, concerning her alleged—falsely alleged—right of dower in my estate, after the absolute divorce which was obtained in Sioux Falls, South Dakota, in September, 1895, which was fully set forth in the newspapers, North and South, the "Sun" maliciously and mendaciously made the monstrous, improper and *feloniously* false and libellous statement in its columns—it said in effect, that "Prince and Princess Pierre Troubetzskoy frequently visited,—spent days at a time, with Mr. Chaloner at the 'Merry Mills,' Cobham, Virginia." I was horrified at this, and at once wrote the "Sun" politely asking them to make a correction, stating that it was utterly without foundation, words to that effect; that paper absolutely ignored my very reasonable request. A monstrous hypothesis that a divorced husband received as his guests his divorced wife with her second husband, has her sleeping in his house! What is the inference? What is the only possible inference? It is a disgusting criticism on all three parties. Any man of the world will see the only inference pos-

sible without going into the unpleasant task of explaining the only possible inference under the circumstances.

To resume: I have no recollection of saying that "I excelled in mental power." I modestly maintain that I did possess mental power. That is a statement thoroughly germane in an investigation into a man's sanity and competency. That requires no enforcement of diction. I did say that I was, *so to speak*, I showed that I was speaking metaphorically—that (I flag the Docs), so to speak—I did say that "I was a mental gladiator, a John L. Sullivan in debate," and I said that because after due practice, years of the most profound toil and deep study of great masters in oratory and argument, of Cicero, of the author of the "Letters of Junius," Patrick Henry, Randolph of Roanoke, Daniel Webster, Voltaire and Byron, to mention no other cogent and logical thinkers, I had got so that I could "knock out"—figuratively speaking—of course, (I flag the Docs), pretty much anybody and everybody that tackled me in argument. Almost anybody of any natural gifts whatever, of any flow of language and imagination could do more or less of the same thing, with the same use of midnight toil. And this is true that "In mental tests or debate he not only had never failed to hold his own, but had invariably "knocked out" his opponent. I say under oath that I do not remember a single instance since I reached years of mental maturity—I matured rather late, and I would put that at about twenty-five or twenty-six, those years—that since I was twenty-five or twenty-six I never remember having been "bested" in an argument, and to endorse this statement I point to the argument in "Chaloner on Lunacy" and challenge anybody to break through my rush-line there, to pick flaws in my logic or break through my line of attack, to mention only one of my mental outputs, one of the (I flag the Docs) children of my brain.

Mr. Duke: The above answer is excepted to as irrelevant.

Q. Mr. Chaloner, Dr. Macdonald goes on:

> "This great mental power and physical power he said was due to his peculiar diet of bread and potatoes with some other vegetables and fruits; that he ate no meat for the reason that persons who eat meat 'could only think with their guts,' as he expressed it."

What have you to say to that?

A. Taking up that last ridiculous statement, "could only think with their guts," taking that up first: I deny that absolutely. I have got no quarrel with meat-eaters. On the record, I ate meat for three years, but it nearly killed me, from 1907 to 1911—inclusive—nearly four years. The trouble was I didn't eat enough bread with the meat and I ate meat too frequently. I am now eating meat twice a week with no bad results, but on other days I eat three loaves of bread but nothing else, no vegetables; it is absurd to suppose, it is a contradiction in terms to suppose that a man who has got such a record as I have for fondness for meat would "have it in" so deep for meat-eaters that he would "knock them" with such an expression that meat-eaters "could only think with their guts." I did attribute my mental power and physical power to my diet, by which I mean that I attribute the health of my mental power and health of my physical power to the fact that I ate nothing which my nature did assimilate. This statement about this use of the word "great" is utterly false; I did not say that, I said "mental power" and "physical power," I was then eating bread and potatoes with some other vegetables and fruits. That endorses my statement that I ate nothing but vegetables and fruit and bread, of course, and crackers at "Bloomingdale."

Q. Dr. Macdonald goes on:

> "That he was the best-hated man in the community, because he made people think, 'not the poor, not the working people' who were all in sympathy with

him, but the 'white scum of society,' the 'riff-raff of society' who hated to think; that he compelled them to think, and hence their hatred of him.'

What have you to say to that?

Mr. Duke: Excepted for the same reason as before.

A. I qualified my remark "that I was the best-hated man in the community" by saying, among certain people, or words to that effect. This is true, saying that society people don't like to think. I found to my disgust—that is why I withdrew from society in New York, one of the reasons, and went South—that New York society people do not like to think; they like to be amused, they like good dinners, good wine, good theatres, good opera, but they don't like *good ideas;* they don't like to think except at Bridge. I don't mean anything against Bridge, Bridge Whist. I think that is a great thing for society, because it does make society think more than it ever thought before. Before the arrival of Bridge society did not think, simply vegetated; it now thinks "according to Hoyle," which is a vast improvement to its previous condition, "vegetation." This is true that I said that I was not disliked "by the poor—the working people." I have always found that poor people and working people do about one hundred per cent. more thinking than rich people or society people or people who are in easy circumstances. I won't take up time to go into the question *of why this is*, but I state that as a fact, and I endorse that by so good an authority, so intellectual and noble an authority as Sir Walter Scott, who had observed the same thing. He says—I quote from a note book of mine which I kept, and which will be put in evidence, in the winter of 1900-1, when I was lying hid in Philadelphia. This note book shows the literary note of my pursuits. In consists of some fifteen or more Sonnets of mine, together with some fifty or so selections from the greatest poets of the world from Dante to Shakspeare, in-

cluding Byron, Voltaire, and others, not forgetting Wordsworth and Burns. I read all of these in the original and made these selections myself. They are not found in any anthology. I mean, they are not found in the order in which I gave them and as I gave them. Of course, many of the quotations which I made for myself appear in the leading anthologies, but I made these irrespective of any list in any anthology that I have ever seen and did it for my own satisfaction and comfort to while away the time of my self-enforced necessary imprisonment during the long time of 1900-1. Sir Walter Scott says as follows—this is a note made in 3|28|01, in the said book—the book will be offered in evidence and I will say in explanation that the letter "O" which appears in black lead, in blue and in red, is a contraction for "opened" and the date follows, means that I "opened" the book at a certain place. I do this as a sort of journal letting me know how often I looked at literary work, and I used red pencil instead of blue sometimes because there are blue marks on the page and I wanted to make the note stand out, because I happened to be making notes with a red pencil for some reason and happened to have a red pencil in my hand when I opened the book; this book is just as it left my hands, just as I wrote on its cover "Sonnets 1|1|01," with an extract from Lord Byron's "English Bards and Scotch Reviewers," on the outside cover. I shall therefore not take from it a pathetic little sign of my poverty at that time. I was an absolute beggar, had no money, and I wanted to decorate a certain page with an eagle; it was pinned on a Sonnet that I wrote on Shakspeare, and I wanted to have this spare page on the left bear a sign of my respect for Shakspeare and I wanted some little symbol and I did not have money enough to buy any and I cut off a little eagle from an "Allcock's" porus plaster and pinned it onto the page where it is now; an eagle that flies at the top of all Allcock's porus plasters—a spread American eagle, and there are enough of the letters underneath left to show the top of the word "Allcock," and that with the little humble pin is pinned to the page oppo-

site the page which has the Sonnet to Shakspeare. At one time this eagle flew (I flag the Docs), this little linen eagle, this eagle stamped on a scrap of linen, flew over the name "Shakspeare" on page 11, which bears the Sonnet to Shakspeare. There are still the holes, two holes, in the leaf, which the pin made when I pinned the eagle over it, and later I removed the eagle from over "Shakspeare" because it hid his name partially and put it on a blank page at the side. I go to all this detail so that the jury will understand seeing an eagle from Allcock's porus plasters among the said Sonnets and quotations from the great poets.

To resume: Sir Walter Scott says on blank page 24—it is not numbered, I only number the pages which have Sonnets on them—page 25 contains Sonnet on the Initiative and Referendum; that was before the article had loomed on the political horizon—on page 24 unnumbered, the following appears which I took out of a book—out of one of Sir Walter Scott's books, on March 28, 1901,—Sir Walter Scott said:

> "I have read books enough, and observed and conversed with enough of eminent and splendidly cultivated minds; but I assure you, I have heard higher sentiments from the lips of poor, uneducated men and women, when exerting the spirit of severe yet gentle heroism under natural difficulties and afflictions, or speaking their simple thoughts as to circumstances in the lot of friends and neighbors, than I ever yet met with out of the pages of the Bible. We shall never learn to respect our real calling and destiny unless we have taught ourselves to consider everything as moonshine compared with the education of the heart."

That same sentiment is pretty well endorsed by another note I find in this same book of mine, dated March 19, 1901, by no lesser personage than Bishop Potter, the Right Rev. Henry Codman Potter, Bishop of Southern New York.

He says:

"The one predominant hunger which salutes us from one end to another of our broad land is the passion, the hunger, the greed of gain. Challenge what method you will in the conflicting web of our industrial, political, social life, and you will find the question of gain behind it. Listen to what scandal you may in the haunts of politicians, in the camps of soldiers, in the halls of fashion, the final standard in the whole business might be expressed by a dollar mark."

Now, one more and I will finish this selection here. I will support that statement of Bishop Potter made ten years ago by the following made this year, May 8th—cited in a Chicago newspaper, May 8, 1911, as I remember it, by Dr. Harry Pratt Judson, President of the University of Chicago. The article is headed:

"DECADENT SAYS JUDSON."

"Four Reasons Why We Are In A Bad Way."

"Chicago, May 8.—Dr. Harry Pratt Judson, President of the University of Chicago, in an address, as President of the Northern Baptist Convention, said the present age was the most decadent in history, with the exception of the days before the fall of the Roman Republic, and before the French Revolution.

"If there is to be social and political regeneration in our Republic, and in the rest of the world," he went on, " it must be at the tremendous regeneration of moral ideals. We recognize in the world's life to-day, four prolific sources of evil, and from these sources come the disruptive forces which are so seriously tending to disintegrate the society of the Twentieth Century. One of these is international; it is war. Another source of endless evil is dishonesty, permeating public and private life alike, tainting the administra-

tion of justice, tainting our legislative halls, tainting the conduct of private business, polluting, at times, even the Church itself. Another vital source of infinite evil is drunkenness. A fourth source of infinite evil in every modern society is impurity of word and act."

These quotations from three such prominent thinkers, I respectfully submit is an endorsement of my preference for working people, for thinking people, to "society people." Why I call them the "white scum of society" is because they are the most negligible part of society in my mind, society in its broad sense meaning the whole people. The fashionable end of society, in my mind, is the most negligible and insignificant part of society. I call it the "white scum" because owing to the leisure that hangs on its hands it can afford to be well-groomed; it does not belong to the great "unwashed." I don't use this expression, the "great un-washed" in any derogatory sense whatever to the class which is known as the "great un-washed" to a certain extent. In war the hi[illegible] generals are only too frequently the "great unw[illegible] "great" if they happen to have great brains—"unau[illegible]ause they are generals in war. Lice only too fre[illegible]ompany war, the scourge of the human race which follows filth, by which I mean lack of washing persisted in for a sufficiently long period. The fact that they are the great unwashed is no insult to the *great* people, by which I mean the *plain* people. My name for the *plain* people is the "great people." The great body of the people, the great bone and sinew of the race. For them I have deep respect. Men who are busy haven't got time to wash as men who are not busy, as idlers, the idle rich. They have time to be well-groomed, and about their only virtue is that they are well-groomed. The nearest they ever get to *Godliness* is *cleanliness.*

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Q. Mr. Chaloner, as this deposition is necessarily hurried I shall go out of the regular course of examining the allegations of Dr. MacDonald on the stand and check up his statement about your Sonnets, in order to get that question elucidated without hurry, as from its nature it is a very important question in your case, and then hurry over what is necessary to achieve this end. What makes this so dangerous is—so important and therefore so dangerous to your case is, that Dr. MacDonald puts a very extraordinary remark in your mouth or alleged you made it, and it is necessary that you should be heard in rebuttal. He said as follows, on page 126 of the Appendix in the brief of *Chaloner* v. *Sherman*, "He recited to us seven or eight sonnets of his own composition saying that he had suddenly become the greatest poet in the world's history except only Shakspeare. 'Except Shakspeare,' he repeated that several times. These sonnets were certainly of a most extraordinary nature and very brilliant in a way." What have you to say to that?

A. I have this to say to that, sir: The statement of Dr. MacDonald is, as most statements of Dr. MacDonald regarding me, false, but this is not so entirely false as most of his statements. There is this amount of truth in it: I said that I had "a greater command over the *Shakspeearean* form of Sonnet than anyone except Shakspeare." When these Sonnets are examined there is not a tinge of swell-headedness in them. The reason is rather laughable. The reason is that nobody writes Shakspearean Sonnets *but* Shakspeare. No leading poet has written a Shakspearean Sonnet, that I know of, since Shakspeare's day. The universal form of the great Sonnet writers such as Milton, Keats and Wordsworth is the Italian form, or what I call Miltonian form—what I term Miltonian form of Sonnet which is the strictly Italian form of Sonnet. In Shakspeare's day a poet by the name of Daniel, if I remember rightly, wrote several hundred Sonnets, but hardly any of his Sonnets live. They are more curiosities of literature than anything else. Whoever hears of Daniel as a poet to-day? Nobody. Where, then, is the conceit

in saying that I have a greater command of the Shakspearean form of Sonnet than anybody but the *author of it*, seeing that that is an abandoned form of Sonnet writing, abandoned on the death of the author, Shakspeare? Broadly speaking, Shakspeare was the discoverer of the Shakspearean form of Sonnet, because he made that Sonnet the God-like vehicle that it is. Other men, possibly one or more, wrote that Sonnet before he did, used that form. I won't be tied down by that opinion unless other men made the Sonnet live and move and have its being for all eternity, made the Shakspearean form of Sonnet the wonderful, magical vehicle for succinct poetical expression that Shakspeare did. Therefore, I approve myself an humble follower of Shakspeare, a worshipper of Shakspeare, a disciple of Shakspeare, in being the only verse writer who had agreed with Shakspeare, that is to say, the King of Sonnet forms and not the Italian which is the mother of the Sonnet and which is the original form of the Sonnet. It is a feather in my cap regarding my humility and respect for Shakspeare when I confine my approbation of myself to the phrase that I have a greater control over the Shakspearean form of Sonnet than anyone *except* Shakspeare. It will be noted, to Dr. MacDonald's credit here for truthfulness, if I can say so with humility, that he says—and this is praise from Sir Hubert if there ever was praise from Sir Hubert on this earth—Dr. MacDonald says, "These sonnets were certainly of a most extraordinary nature and very brilliant in a way." I am grateful, very, to Dr. MacDonald for that and shall ever remain so, and however I differ with Dr. MacDonald on questions of morals and on questions of ethics I am one with him in his opinion on my Sonnets if I can say so with modesty; if I cannot, I am afraid I will have to be immodest for the nonce, immodest for an exception, once in a way. These Sonnets being lugged into the limelight it is, of course, necessary for me to defend my statement that I did have a greater mastery over Shakspearean form of Sonnet than anybody but Shakspeare. I would further add, as I have stated, as I have stated in my affidavit—

Dr. Macdonald said on hearing the Sonnets read, some round dozen or so, half a dozen, say, or a dozen, there or thereabouts, "Their form is classic; they are gems, rich gems—*rubies*." I shall always credit Dr. Macdonald with high literary instinct for his remarks on my Sonnets. It will be remembered that he has been endorsed by no less an authority than the London Academy, which, in its issue of 8|8|08, gave half a column review to my Sonnets under the title under which they are published, namely, "Scorpio," published by the Palmetto Press, Roanoke Rapids, North Carolina, and in this review, at the conclusion of it, after speaking of me as a "real poet" or words to that effect, said that a Sonnet quoted, called by the way, "The Devil's Horseshoe," the Sonnet which was reviewed specifically and quoted at length in the said review—said that the climax of my Sonnet reminded one of the "The Biting Irony of Byron," or words to that effect. My Sonnets, it will be seen from this, are not love Sonnets; they are not "The Sonnets to a mistress' eyebrow." These Sonnets I should now touch on very roughly. This is a prosaic age—this is the quotation—this first quotation "A Damned Mechanical Age." This is an age when literature is —to put it mildly—not at its highest ebb and poetry is pretty nearly dead.

DEPOSITION 1912—Continued.

VOLUME V

United States Circuit Court for the Southern District of New York.

JOHN ARMSTRONG CHALONER, Plaintiff,

against

THOMAS T. SHERMAN, Defendant.

3:15 P. M.
Charlottesville, Va., January 11th, 1912.

HEARING PURSUANT TO ADJOURNMENT.*

PRESENT:

The Commissioner;
The Plaintiff in Person;
Judge R. T. W. Duke, Jr., Counsel for Defendant.

APPOINTMENT OF "COMMITTEE" FOR PLAINTIFF, 616-622.

Q. Now Mr. Chaloner, whilst you were in "Bloomingdale" were not various mortgages on pieces of your property foreclosed and the result in surplus money given to you in most of the cases?

*Cross-Examination begun by Judge R. T. W. Duke, Jr., Thursday, January 11th, 1912, in Volume IV, page 376.

A. Yes, there was always surplus money—that is, always a large equity over the mortgage.

Q. Is it not a fact that Mr. White could not obtain this money under the power of attorney which he had from you?

A. No, I don't know that, Judge; I don't know that.

Q. Well, then, I call your attention to this fact; you owned a building at 298 Broadway; was not that building condemned and had to be taken down?

A. It did.

Q. Did not Mr. White arrange with the Equitable Life Assurance Society for a loan to pay the existing mortgages in connection with the new building?

A. He did.

Q. Did not the Equitable Life after agreeing refuse to complete the agreement on the ground of your being a person of unsound mind in "Bloomingdale" and decline to recognize White's power of attorney?

A. So White said.

Q. Didn't this make it absolutely necessary, to protect your property, that a committee should be appointed?

A. No. The Chanler family were well capable, richly capable of taking care of a little affair like a mortgage of a hundred thousand dollars necessary to put this building up, with all their wealth; and it shows how unbrotherly and unsisterly they were to hesitate between money, a trifling matter to them of one hundred thousand dollars, or so, to hesitate between that contingency and choosing the other, which was to have me condemned for life as an incompetent person as well as a lunatic.

Q. I am now speaking as a lawyer to a lawyer, leaving out the question of your brothers and sisters and relations whom you say at that time were not friendly with you, was it not, as a legal proposition, absolutely necessary to have a committee for a person who was in an asylum as a lunatic, in order to borrow money and erect a building?

A. It is, unless you are going to let him out. They could have let me out and settled it all. I generalled the whole

scheme; I was the man that built 298 Broadway. That was the house that "Jack" built; I am "Jack"—my initials are "J A C"—my name is John, and he built it under considerable difficulties, too; and his power of attorney aforesaid with his lugubrious views that there was nothing for him to do but sell the property, and White was enthusiastic over my accepting an offer, the very handsome offer of $140,000 for the hole in the ground represented by the tumbled down building of 298 Broadway. I emphatically refused to accept that or any other price, and told White if it was worth $140,000 to any man in New York or elsewhere, it was worth it to me; told him I absolutely refused to entertain any such proposition of sale, and urged him to follow out my behest and raise that money. He said, "How?" I said, "Sell my other real estate in New York and get the equity and then have a builders' loan." Therefore, I discovered the means to build the "house that Jack built," and he did so.

Q. Now, suppose you had been ever turned out of "Bloomingdale," would any lender of money, corporation or otherwise, recognize you as a person capable of contracting, until the order of the Supreme Court committing you to "Bloomingdale" had been vacated?

A. Possibly not, but when I was turned out of "Bloomingdale" I meant to—I mean the vacation of said order, of course, Judge.

Q. Is it not a fact, Mr. Chaloner, when the question of committee was broached to you by Mr. White, you only agreed to it upon the promise that Mr. Prescott Hall Butler should be appointed such committee?

A. No.

Q. Mr. Butler, was therefore not appointed at your suggestion or request?

A. No, it was Stanford White's—emphatically no! I did not object to him at all, I had no reason to object; I thought Butler was friendly to me; he had always appeared so, but it was White that made the suggestion.

Q. Before Butler was appointed, however, you thor-

oughly understood that he was to be appointed your committee, did you not, and made no objection?

A. No objection. I would like to say, that at that time I was not much of a lawyer, I had never done much work at law, no work at all in fact, outside of just barely getting into the bar, and I didn't know anything about the meaning and consequences and gravity of a Sheriff's Jury and the appointment of a Committee of a Person and his Estate; I didn't know that it put a stigma worse than even the commitment had; I didn't know for a moment that it made that permanent and "rubbed it in," so to speak. I simply state my ignorance of the law, that is all.

Q. Before that committee was appointed you had notice, had legal notice, of the proceedings before Judge Giegrich?

A. I did.

Q. You had an opportunity to appear, had you not, before the jury in that case?

A. No, because I was physically incapacitated as has been fully explained on direct and in "Four Years Behind the Bars," my book.

Q. I understand that, but you did not ask to have the question postponed until you were able to appear before the jury, did you?

A. No, but I told the jury through Dr. Lyon, as he states in his evidence on the stand, that I was physically unable to appear; I did not tell the jury what they ought to do; I did not feel that was incumbent upon me, or tell the Commission what they ought to do; the Commission, they sat on me with the jury; that was not my province; as honest and intelligent men they should have done something of the sort; they should have sent a committee of the jury up there to see me; I put it in their way to do the right thing and they failed to do it.

Q. Who was at fault to do it?

A. Both the commission and the jury. The jury showed most indecent haste regarding hurrying through the

case; it was a case of a man who was worth at that time and admitted by Sherman, a quarter of a million dollars of property, and by gad, they didn't even spend three hours over this thing; you would think it was a question of three dollars before a magistrate over a razorback hog, and so help me God, these men didn't spend three hours in deliberation on that question. One of the most monstrous things in this whole case. Here I was, they had the proceedings set at the ghastly hour of four o'clock and they closed at five or half-past five. I said three hours, because (as I have stated, I am a careful man—they were not one hour and a half—in all probability not an hour, if I remember rightly; I speak from memory; it was set for four o'clock in the afternoon, there or thereabouts, a most startlingly late hour, and when the question of a possible adjournment came up the foreman of the jury rose up and said, purely ex parte, in effect, "The jury don't wish an adjournment. This jury have seen enough of the facts and know enough of the case to bring in their verdict; it will be a very difficult matter to bring this jury together again; we don't wish an adjournment." If that had been stated in the case of a jury which had been sitting in a case which had run on for a month and had been separated from their wives and families for a month, that would have been a different matter, but they had not stayed there one day; they had not stayed there three hours. It is a monstrous criticism on New York justice or injustice.

Q. What do you think could have actuated the jury in this conduct?

A. I have stated, Judge, in "Four Years Behind the Bars"; I don't say the jury were bought, but I say this without hesitation, that had the jury been bought they could not have acted otherwise, and this also applies to the Commission. I hasten to say; I don't say it in the book, but I say it here, this criticism.

Q. But, as I still understood and repeat, you yourself did not request either through Dr. Lyon or any other person

that the case should be postponed until you could appear before the jury?

A. No, I did not, for the reasons given.

* * * * * *

CHANLER FAMILY, PLAINTIFF'S ATTITUDE TOWARDS, 581-584.

Q. You don't believe, Mr. Chaloner, that your sister, Mrs. Elizabeth C. Chapman, had anything to do with your commitment until she visited you in "Bloomingdale," and from your testimony in chief the only reason you gave for believing her inimical to you was that she said no one had ever escaped from "Bloomingdale." Do you think that a good and sufficient reason for believing she wished to have you confined in a mad house?

A. That is not quite as full as my statement.

Q. Well, go ahead then.

A. I said that undoubtedly, but also her whole attitude had great bearing on her interest. I said, in effect, "Those are nice things," pointing to the iron bars on my cell, "to have in a room in which I am," she knowing how high strung I am, how sensitive I am regarding environment, and that sort of thing. In other words, I have got a skin and not a hide on me. She knew perfectly well that the only answer she could give, if she was in sympathy with me, would be "They are horrible and you shan't stay here another moment, after I have heard your wishes and know how I am to bring this case to get you out." That is what she would have said had she been in sympathy with me, instead of which she said, "Oh; they are there to keep you from running away." That was what sent the iron into my soul, as David, King of Israel, says—his words were, as I remember it: "And the iron entered into my soul"—the iron of those bars, figuratively speaking, (I flag the Docs) entered my soul when my favorite sister, in a cool, flippant, easy, society voice, said, "Oh, they are there to keep you from running away," as much as to say if I had handcuffs on my wrists and objected to that criminal

indignity, as though she had said under those circumstances, "Oh! they are there to prevent you from using your hands like an honest man." It was after this that I made the remark to which she made the reply which you, Judge, have just quoted. As soon as she made this remark about the bars, I knew at once, instantly, that she was on the other side and had changed as mysteriously as had Stanford White, and almost as mysterious—not quite, because she had given me some inkling of what she was going to do at the luncheon at the Cafe Savarin, in the Equitable Building, 120 Broadway, now burnt up—at a lunch there with me in November, 1896, alluded to in my letter to Capt. Micajah Woods, July 3d, 1897, and also on my direct, if I remember rightly, in which she said the family thought I was crazy, when I said, "What does the family think about my not going to the wedding (the wedding of Alida Beekman Chanler Emmet, wife of Temple Emmet)." She replied, "Oh! they think you are crazy," words to that effect, which I looked upon as a joke to which I had been accustomed by years of hearing; because whenever I had said anything that the Chanlers found hard to refute in argument they cut the matter short by saying, "You're crazy"; so I thought nothing of this remark, and laughed it off, and thought it was perfectly natural for them to say so. They just said it for a bluff and to save their faces, because they could not argue me down; they tried to laugh me off; and therefore Mrs. Elizabeth Chanler Chapman had given me cause to see that she was not entirely in sympathy with me, but no cause to infer that she was hostile to me until she made this remark about the bars. Later on I asked, just as a matter of curiosity, why, while they were putting me in a lunatic asylum, such a notorious place as "Bloomingdale" was selected, and it was to that remark that she replied, "Nobody has ever escaped from there."

Q. Your idea is, then, that your sister was all the time in this conspiracy, though unknown to you, until you found it out by her conduct on her visit to "Bloomingdale"?

A. I am regretfully forced to conclude that.

* * * * * * *

CONSPIRATORS AGAINST PLAINTIFF, 562-563, 573-579, 580-584, 586-591, 603-609, 691.

Q. Mr. Chaloner, as I understand from your examination in chief, your commitment to "Bloomingdale" as a person of unsound mind was the result of a conspiracy which had been formed between Lewis Morris Rutherfurd, Sr., Henry Lewis Morris, your brothers and sisters, Stanford White and Arthur Astor Carey?

A. You are correct, sir.

Q. I understand that Mr. Lewis Morris Rutherfurd and Henry Lewis Morris were actuated by malice on account of a charge of unspeakable conduct which you made about Mr. Lewis Morris Rutherfurd, Sr.?

A. Precisely.

Q. Your brothers and sisters were actuated mainly from pecuniary motives, one brother in addition to personal reasons to delay payment on a note for $40,000 which you had given the company in which he was interested to the extent of $50,000, and all of these brothers and sisters, with the exception of one sister, on account of your failure to invite them to your wedding?

A. You are absolutely correct.

Q. Mr. Carey's dislike to you originated in Paris, '86 or '87, did it not?

A. Correct.

* * * * * * * * *

Q. Didn't Mr. White visit you repeatedly in "Bloomingdale"?

A. He did.

Q. Did he not visit you in "Bloomingdale" a few days after your commitment there and have a conference with you?

A. He did.

Q. Was not this old difficulty, if you may call it so, en-

tirely made up and all your friendly relations resumed before Mr. White's visit to Merry Mills when you went North, just before you were committed?

A. Partially so. I have explicitly stated that I was alarmed, or at all events, concerned by Mr. White's change of attitude towards me; in December, '96, he visited me at my rooms in the Hotel Kensington and, instead of being affectionate, the affectionate friend that he had been for years, he was cold and silent and only stayed about five minutes; and on top of that he wrote me a letter of an insulting nature, by which I mean, he did not call me any personal terms of insult, but it was insulting in the tone, coming from a man who was bound to me by terms of friendship second only to those of Damon and Pythias (I flag the Docs). In this letter he said, in effect, as I remember it,—it was years and years ago, of course—December, 1896—"I am glad you have gone back to Virginia; New York gets on your nerves and you need a rest; the best thing you could do under the circumstances," and more than all that, in the same vein, which, coming from Mr. White, who was the very apostle of New York life, the man who was most enthusiastic on the allurements of "The Great White Way," who used that as bait to get me to New York when he came on to lure me to "Bloomingdale" in '97, and begged me: "For God's sake, come to New York for a plunge in the Metropolitan whirl"; for White found everything quiet outside of New York; he was extremely officious and this was endorsed by his previous brutal remark to me already cited by me on direct, in effect, at "Monticello," at the said conference alluded to, or rather meeting, "Why in hell do you bury yourself in the country? Why don't you come to New York and live like a white man?" or words to that effect. Having placed this on the record I again allude to my peculiarity of not burdening my memory with exact details.

Q. Now, Mr. Chaloner, I ask you to, or I will read to you Mr. White's statement—page 284—as detailed in your examination-in-chief, as follows: "The first thing he said to

me was, with an expression on his face I had never seen there before, 'what the hell do you mean by burying yourself out here in the country; why don't you come to New York and live like a civilized man?'" Now, having read that remark to you, Mr. Chaloner, I ask you, considering the previous relations between Mr. White and yourself, whether that remark was not really a jocose one and not meant in any way to give offense, but rather, to use a slang term, "jollying"?

A. That question is very well put, if you will permit me to say so, and I at first thought it might be, and looked at White when he said that to see if he were bantering me, or jollying me, but his eyes had a piercing, cold, penetrating look, hostile to the last degree; and his tones were harsh and cold and he was thoroughly aggressive, and it was the tone of the voice and the accompanying look which convinced me of his latent hostility; and it was only after I had waited and considered the subject, and, very rapidly, of course, the tone of the voice, and look of the eyes, and general expression of countenance, that I believed the words he uttered. I thought it was "a jolly," as you say, until I checked the words by the looks and the tone, when I was convinced that he was hostile.

Q. Can you give any reason for this sudden change from the relations of Damon and Pythias to a state of such violent hostility on the part of Mr. White?

A. I cannot. It has been a cause of absolute wonderment to me, and I have never been able to solve that problem. I can only place that alongside of Mr. White's change of base as regards women. He told me when we were discussing relations with the charming sex, he said, in effect, "I would not have a thing to do with actresses; they are absolutely artificial, and liable to be very mercenary. You can get just as much satisfaction out of an attractive girl off the stage, in fact, a damn sight more, than you can from the most accomplished actress; and a man that trapses around after an actress is a damn fool." I quote that at length, it was words to that effect, and fully as strong as that, to show

the wonderful change in White later on. A man to change from that very wise and sagacious—I agree with every word he says there as regards the desirability of avoiding actresses; I don't, necessarily, go any further than that—to change from that wise, world-wise, and thoroughly sound view of *liasons*, of love affairs, with actresses, to go from that sound ground, to supporting a certain section of the chorus in "Florodora," is a considerable step to the worse; and that is what Mr. Stanford White did, on the public record. Now, one thing that White did regarding the "Florodora" chorus, which I complimented him for doing, and I would like to have that credited to his memory—he did have some splendid qualities, White did, otherwise I certainly would never have been in the relations of Damon and Pythias—he was the most charming man until he went to the bad—he was generous and thoughtful of other people—and here is an instance: he had a standing order for every girl of the "Florodora" chorus, who did not have her teeth in good condition, to be sent to the dentist and the bill sent to him. That was a magnificent, altruistic, and truly Christian act; and I say in all sobriety and soberness on the stand; and I don't know of any other man who would have done that, except, possibly, under certain circumstances, your humble servant. There is nothing to a woman more of an asset than her teeth, more necessary for her appearance and health, particularly for an actress, and before the footlight, with an electric light shining right into her mouth, their teeth *must* be in good condition, or else they will lose their jobs. That is the truth. So White was most interested in sending the whole chorus of "Florodora" to the dentist, and having their teeth plugged with gold fillings—not amalgam—first class job—ten or fifteen dollars per tooth—and that I say was a most generous act, and most knightly and chivalrous act, and I always shall respect White for it. That was one of the flotsams and jetsams of his splendid character that remained after he went to the devil. Now, for a man who had this rock-ribbed position regarding the siren nature of the ladies of the stage about

attempting to have flirtations with them—nobody has a greater respect for the stage than myself—the Paris Prize embraces the stage, as Edwin Booth endorses, as I explained on the direct—it is a magnificent profession, and I certainly think if I were put to it I would go on it myself, if I could not find anything else to do. It attracts me very much; if I could not get anything more attractive—I mean, could not write law books—if I were pushed to it I would attempt to earn my bread on the stage. The press may say that I am talking through my hat. But I have been endorsed on this line by a perfectly intelligent and competent witness, Mr. Waldon Fawcett, who wrote a syndicated article which appeared among other papers—I believe it was syndicated—in the Times-Dispatch of 1908, on record, if I remember rightly; and he said, in describing me, he said, I was not ugly enough to frighten a horse—he didn't use that language—but my modesty prevents me from stating what he said regarding my personal appearance; but he said, "Graceful as regards bearing, and with a voice"—this is word for word—"with a voice that any actor might envy." I will push that forward now to endorse the statement that I would take to the stage in the event of shipwreck and of my failing, which is most unlikely, and would enjoy the episode, and would not starve to death, because I have a fair voice, and won a prize using that voice in declamation so far back as 1876, took the first prize at the Military Academy, out of seventy-five boys or more, St. John's Military Academy, Ossining-on-Hudson. The Shakspeare I won on that occasion is on record in this case.

To resume: White suffered such a complete change of character in being able to eat his own words and go back on his position regarding the danger of the sirens of the stage, I mean, these actresses who will form *liasons*—there are many who do not—I don't blame them, I simply state the fact—and to move from that position to being a frequenter of theatres, of green rooms in theatres, and more or less keeping actresses, on the evidence—this change of base as regards women was not more mysterious and not less mysterious than

his change of base regarding men, by which I mean myself. He suddenly without any rhyme or reason went back on me, and took this dislike to me, and went over to the Chanler family within the twinkling of an eye, without any warning whatever; there was nothing which preceded this attack on me at "Monticello," and it came like a bolt from the blue, this attack on me, and I have never been able to explain it and cannot now, therefore, explain it. I simply instance this change of base regarding the stage as another example in Stanford White's make-up of wonderful change of character, and retrogression, which set in in 1896 and rapidly extended to his death.

Q. It was in consequence of this difficulty, Mr. Chaloner, that you are now satisfied that Mr. White united in this conspiracy to have you confined in a madhouse for life?

A. I am.

Q. Did you not give Mr. Stanford White a general power of attorney to attend to your business, and did he not devote a great deal of time and give much attention to the business?

A. A limited power I gave.

Q. Did you ever revoke that power of attorney or take your affairs out of his hands?

A. No, I could not; I was put in jail immediately after giving it.

* * * * * * * * *

Q. Mr. Winthrop Astor Chanler, as I gather from your direct examination, Mr. Chaloner, has really been the main man and the active person of the Chanler family in having you committed to Bloomingdale; is that right?

A. Yes.

Q. He was actuated, you say, in this conspiracy, by an altercation you had with him at a director's meeting of the Roanoke Rapids Power Company in 1896?

A. That was the culmination of his hostility to me; it

had originated years back, to go no further back than my wedding to the present Princess Troubetzkoy, June 14, 1888; he was not invited and he never forgave me as his letters show, his various letters show, his threatening letters show, on file in the 1908 deposition in this case; and he never forgave, as I say, and followed me with hostile remarks and hostile action, talking behind my back, as I learned from society people the remarks he had made against me for years and years, until it culminated in this act of aggression on my person at the Hotel Kensington when he admits in his 1905 deposition that "he would have struck me had the other directors not interefered."

Q. So, Mr. Chaloner you have been forced to the conclusion that your brothers, [illegible] sisters, Henry Lewis Morris, Lewis Morris Rutherfurd, Sr., Stanford White and Arthur Astor Carey entered into a regular horrid conspiracy extending over a course of years the ultimate object of which was your commitment to a lunatic asylum for life?

A. Yes, but it was gradual; this conspiracy did not include all the conspirators at the same time, it was spread over a course of years, and, for the first years of the conspiracy, it was confined to Lewis Morris Rutherfurd, Sr., and his near relative, Henry Lewis Morris; they conspired and waited for the opportunity to attack me. They knew I could not be attacked as long as I was married, because—that requires no argument—when a man is married his wife can get him out of any such difficulty as that by having a habeas corpus proceedings brought at once; no man can accuse a man of insanity when his wife is friendly to him. That is understood. They had to anticipate my divorce and they also had to anticipate the breaking up of my law firm; because the aforesaid W. G. Maxwell was a gifted lawyer and a most daring man, afraid of nothing, and he would have stayed by me to the death, had his moral character been on a par with his physical courage, for they knew he was afraid of nothing; that he was a most profound lawyer; and therefore they were afraid to touch me until Maxwell had disbanded the firm, had

retired from the firm; and until that time my position was absolutely impregnable, and they did not show any sign, did either Lewis Morris Rutherfurd or Henry Lewis Morris, except that Lewis Morris Rutherfurd would not see me; as has been shown on direct, and Henry Lewis Morris invited me to take my property out of his law office in '92, June, or when I formed the law firm of Chanler, Maxwell & Philip, and that showed hostility, the cause of which I could not understand until I was laid in "Bloomingdale" by the heels.

Q. This whole conspiracy was a dark, mysterious thing, concocted by these people, the end of which did not dawn on you until you were committed to "Bloomingdale"?

A. Absolutely, sir; it was too unlikely, too sensational, it was too blood-and-thunder, it was too dime-novel-like, for me to entertain any such idea until it actually had me by the heels, as aforesaid.

Q. Now, Mr. Chaloner, according to your statement in the direct examination, there was peace and quiet and more or less loving conditions between all of your brothers and sisters and yourself but one, just before the time of your marriage, was there not?

A. There was absolutely; no doubt about that; they called me—I was known in the family as "the peace-maker."

Q. Which brother was it you referred to as being inimical?

A. Winthrop Astor Chanler.

Q. Now, Mr. Chaloner, these brothers and sisters of yours, I understand, are perfectly normal people?

A. Beyond the shadow of a doubt; no more sane people in the world; no more practical people, as their conspiracy proves.

Q. They are of more than ordinary intelligence?

A. Beyond a doubt; all highly gifted and talented.

Q. They are all people of large means, very wealthy in fact?

A. Yes; they are, all millionaires, every one of them.

Q. They move in the best society in New York, do they not?

A. They do.

Q. As a general rule, they are people of kindly and sweet natures, are they not?

A. They are, apparently.

Q. Now, Mr. Chaloner, can you, after all these years, when anger should have died down somewhat and sober reason resumed its sway, still say that these people, normal as they are, standing as they do, wealthy as they are, entered into a horrid conspiracy to incarcerate you in a mad-house cell for life, take your property from you, wreck your whole life and character, for the reasons you have given and the money you possess? Can you not be mistaken in this—can it not be possible that you are mistaken in this?

A. I regret to say, Judge, that I cannot conceive of any possibility of my being mistaken in this. It has overwhelmed me with grief; it has aged me; it has saddened me—when I say *aged*, I mean, mentally—it has made me an old man, a man old beyond my time mentally, not physically; it has saddened me with life and with human nature; it was a most horrible revelation. Nothing so sad in my life, except the death of my devoted mother and father. It is horrible! It is horrible! but it is so.

Q. Now, Mr. Chaloner, if I could give you reasons why you are mistaken and bring you evidence to the contrary would you not be willing to admit yourself wrong and mistaken?

A. Certainly, Judge, if you could bring in new evidence, I am always open, as a court officer, to new matter.

Q. Well, now, may I ask, what evidence it would require on your part to convince you that you are wrong in this terrible charge?

A. A visit at the hands of Angel Gabriel, or some such super-human medium.

Q. Nothing, then, but a divine revelation would be sufficient to convince you that you are wrong?

A. Beautifully explained, Judge. Nothing short of divine revelation.

* * * * * * * *

Q. Dr. Starr, however, according to your examination in chief, was actuated in making the affidavit which he did for a pecuniary consideration in your judgment?

A. Mainly. But also, as I stated in my letter to Captain Micajah Woods—I made some remarks about the medical profession which he, Starr, didn't like, and he took it as more or less personal—I didn't mean it to be personal—in a more or less personal way; and he is a very haughty individual, is Starr, he is well off and has got a high position in the profession there, and is a conceited man, and very domineering—really, a man like Starr,—like this Starr,—is a man who would take a violent dislike to a man for the slightest and most trivial cause, and would not hesitate if he did to glut his spleen, and take any advantage of a man he could, to get even with him; so it was not only lucre, but lust of spite, that impelled Starr to act in the quack way he did, the criminal-quack-like way he did, in sending me to prison for life.

Q. Dr. Starr is a man of high character and standing, both as a gentleman and doctor, in the City of New York, connected with Columbia University, is he not?

A. He is, *apparently*. As regards character—he has never been caught. This is the first time that Starr has been found out.

Q. In your belief, therefore, Dr. Starr was willing to gratify personal spite because you had spoken badly of the profession to which he belonged, by perjury, and an act which would commit a sane man to a lunatic asylum for life?

A. I am regretfully forced to admit that, being under oath.

Q. Can you imagine, Mr. Chaloner, a more diabolical, a more fiendish, or a more horrible, or a more unnatural, a more hideous thing than for a set of people to gratify petty

spite, or even gross spite, to unite in a conspiracy to place a perfectly sane man in a lunatic asylum for life?

A. I cannot, Judge.

Q. Can you believe it possible—I ask this in all seriousness—that people of your blood and your connection, and people who had been your friends, could unite in such a conspiracy for such a horrible and diabolical crime? Think of it seriously and answer me, if you please?

A. With pleasure, and with regret: If these two terms can be in juxtaposition. Here is my answer, Judge, on the facts. The Chanlers after having the Virginia proceedings of 1901 postponed for one month, on the plea that two or more of the male members were abroad, one in Europe and one in Mexico—at least two—and in order to give these gentlemen an opportunity to be present, asked that the trial be postponed. That is all of record, through John B. Moon, counsel for Prescott Hall Butler, the former false alleged "Committee" of my Person and Estate. That is on record in the opening statement of Capt. Micajah Woods to the Court in the 1901 proceedings, the gist of it is, and it is reinforced by the examination of Capt. Micajah Woods by my counsel in the 1908 deposition at which he testified in Charlottesville, and also in the Louisa County proceedings had September 20, 1901, at which the Hon. John B. Moon was present as representing—also in the pay of—Prescott Hall Butler, in the proceedings there had, which proceedings were postponed, after the 1901 proceedings, to take place, in order that the judge of the Louisa County Court could determine whether the money which they asked for, which was mine, should be given to them—my counsel—and not turned over to Prescott Hall Butler. Those proceedings were postponed willingly by me without hesitation and for the time desired, although at great cost to me, because I was impatient, if I may, as a philosopher, employ that term, but not too impatient to be courteous as the event proved—I was impatient to have the stigma of insanity removed from me and I waited for thirty days. At this trial not one single solitary, member of the Chanler family was present; show

ing that their plea was mere bluff, their plea of having the case continued for a month in order to allow the Chanlers to attend, was mere bluff; and it was done really as a desperate attempt to get me to deny their plea, in order that they might say they were not able to appear because they were in Europe; hoping I would be so impatient that I could not control my impatience, and would deny their plea for a continuation of the trial, and would say, "No, the trial must go on when set, for the opening of the October term of the Court"; in which event they would be able to say, "We did not go down there because we could not, because the oldest members of the family were away, and he was afraid to meet them in court; and he was afraid to have a thorough investigation of his case by his family; so he hurried the proceedings in that he did not allow them to be delayed for thirty days, in order to give the older male members of his family an opportunity to be present." That was their little game, on the evidence; but none of them showed up; and, furthermore, *not only that*, but they never sent me a line of congratulation on the issue, not as much as a postal card, letter or wire; and from that day to this, Judge Duke, I have never received one line or one word, direct or indirect, from any member of the Chanler family, *near or remote;* that—and mark that, near or remote—there are immense connections throughout the world, all over the world—I have got relatives in Japan, in Italy, in Germany, in England—blood relatives—all over the world, and of this immense connection nobody—nobody I know of in society has a wider connection than has the Chanler family—they are related to a majority of the leading families in New York and Boston—*not one member of this enormous family has sent me one line of congratulation.* And congratulation for what? That I had been proved innocent of a charge of murder? No. But that I had been proved innocent of a perfectly innocent charge, namely, of lunacy. I mean one for which I would not have been responsible, as I would have been for a charge of murder. There is no moral dereliction in being insane. It is a misfortune, hideous misfortune; but murder, of course,

it requires no argument to see, is among the worst crimes in the world, among the very worst. Here was this charge of lunacy and incompetency being wiped from my brow; I receive not one whisper of congratulations and never have, in the last ten year, *not one word!* and that simply endorses beyond cavil, argument, or peradventure, the accuracy of my views, when I accuse the Chanler family of an unqualified conspiracy, criminal conspiracy against my life, liberty, happiness and property. There are the cold, hard facts, Judge. They have not moved; and they are so stubborn, these facts, so absolutely eloquent of crime on the part of the Chanlers, that my old friend, the late Major Thomas L. Emry used to twit Winthrop Astor Chanler when he went down to Roanoke Rapids to the Directors' meetings of the Roanoke Rapids Power Company—used to meet him there several times a year, and Major Emry being a director would be present, and for years Major Emry used to laugh with me—I frequently visited at his house in Richmond and also at Weldon, North Carolina—and he would laugh with me, and say "I have told Mr. Winthrop"—he always spoke of Winthrop Astor Chanler, as "Mr. Winthrop"—"I told Mr. Winthrop what a funny thing it was that they never sent you any congratulations on your being pronounced sane at that trial. He never would acknowledge it though. He would always get out of it by saying, 'You don't understand, Major'." This went on for years. Finally, after this, five or six years, he said, "Mr. John"—he always called me, "Mr. John"—"Mr. John, Mr. Winthrop has finally acknowledged that he made a mistake!" I said, "*What*, Major! Is that *possible?*" The Major replied, "Yes; he actually said, 'We made a mistake'." There you are, Judge.

(Mr. Duke: All the foregoing answer which relates to any conversation between Major Emry and any other person is excepted to as plainly hearsay and irrelevant.)

The Witness: (Continuing) To conclude my answer to your question, I would say, that I am forced regretfully

and sadly to say, that I cannot escape the conclusion that I was the victim of a deliberate criminal conspiracy on the part of the Chanler family and their allies.

* * * * * * * * *

Q. In other words, Drs. Starr and Fuller were in the conspiracy with your brothers and sisters and were their active agents in your commitment?

A. Yes, but I except Dr. Fuller; he was the innocent victim of the malicious and malign criminal, Dr. Starr, as I have explained on direct.

Q. You have evidence, you have stated, that it was Dr. Starr who wrote the whole of the "indictment," as you call your commitment papers. Have you produced this evidence yet, or if not, will you produce it at the trial?

A. No, that evidence, as stated at the time, was what Stanford White informed me, a few days after my incarceration in "Bloomingdale," in a conversation which I have fully described.

COUNSEL COMMUNICATED WITH BY PLAINTIFF IN "BLOOMINGDALE," 484-487.

Q. Did you ever attempt to have any consultation or communication with counsel whilst in the hospital?

A. I did.

Q. Who was that counsel?

A. The Hon. David Bennett Hill, who left me to rot in "Bloomingdale" after the interview because on the evidence he had been "got at" by the Chanler gang.

Q. Your charge, then, against Governor Hill, is that he forsook your righteous cause as a lawyer, because he had been improperly approached by your brothers, or the Chanler gang, as you have described them?

A. Practically, yes.

Q. What persons did you correspond with whilst you were in "Bloomingdale?"

A. With the parties I have mentioned on the direct. To mention a few right away: George H. Barnes, member of the New York Bar—New York City Bar; Halstead H. Frost, Jr., member of the same, and former a law-coach of me when I was studying for the Bar in New York, and also member of my class of '83, at Columbia, as was also the said George H. Barnes; also the late Thomas Jefferson Miller, of the Manhattan Club, well known by the judges of all the Supreme Courts on Manhattan Island as a most upright and honest citizen—he was not a lawyer, but sat on frequent or rather frequently sat on Lunacy Commissions and other commissions as a lay-member, and was held in the highest repute by such a judge as Judge Lawrence, the lineal descendant of "Don't give up the ship" Lawrence, one of the most upright judges since Daniel himself came on the bench. I have seen Judge Lawrence play billiards with Uncle Tom Miller night after night at the old Manhattan Club, both when it was on the corner of 15th Street, southwest corner of 15th Street and Fifth Avenue, cata-cornered from the Hotel Kensington, and also when it moved to the old A. T. Stewart residence, northwest corner of 34th Street and Fifth Avenue; night after night have I seen them play billiards. Uncle Tom Miller and Judge Lawrence never kept company with any but the most eminent and respectable citizens. He was the intimate friend, Uncle Thomas was, of Judge Lawrence, and also other judges of the Supreme Court of New York; and Mr. Miller was one of the best known men of any man in New York in Clubdom, one of the most honorable, upright and truthful; he was so honest he was almost a by-word. When Dr. Austin Flint, Senior, visited me while in "Bloomingdale" he said, as I have said on my direct, "he tells the truth"; and Uncle Tom Miller was known to everybody in New York who knew him as "the man who tells the truth" in a city only too full of liars. I don't wish—(I flag the Docs)—I don't wish to have it understood that I am saying everybody in New York is a liar, I say it is only too full of liars, and there are too many of them there. One

more man I attempted to get, Mr. Delos McCurdy, none less than the man that broke Samuel J. Tilden's will, and thereby robbed the people of New York of half of the benefits of his will, which gave the bulk of his estate to what is now known as the "New York Public Library,"—"Astor-Lenox-Tilden Foundations"—that I understand is the phrase. Delos McCurdy went to work and dynamited Samuel J. Tilden's will, thereby defeating one of the most cherished of that great democrat's wishes—destroyed and ruptured his will. I knew that was not a very saintly act upon the part of McCurdy, but I knew it was a profound legal one, a very learned legal one; he pierced the weak point in Tilden's will which, by the way, if I remember rightly, was, that Tilden had been guilty of the mistake, as a lawyer, of leaving his estate to an institution which had no existence in law at the time; he left his property to the "Tilden Library," or words to that effect, meaning that the library should be incorporated and brought into being after his death. His intent was perfectly plain, was stark naked in his will, but the law said, and, rightly, that is too indefinite and too much danger can accrue from allowing a precedent to be established of leaving money to an institution which does not exist actually in law, and therefore, the court broke Samuel J. Tilden's will, and Delos McCurdy was the man who supplied the jimmy to burglarize his will (I flag the Docs), as above described; and therefore selected McCurdy as surely a learned lawyer, and I have fully explained on direct how he turned me down.

Q. I understand then, that both Mr. Barnes, Mr. Frost and Mr. McCurdy conferred with you, in regard to your case, and declined to take it?

A. Not exactly that.

Q. Well, go ahead and explain that; I want to know what it was?

A. Yes; I only conferred with Frost, as has been fully explained on direct; he is the only man that met me in Westchester County, he met me at Valhalla by appointment; Barnes I communicated with by letter, and McCurdy I wrote to, but he never replied. That is the situation.

DELAY IN PLAINTIFF'S DEPOSITION EXPLAINED, 723-730.

Q. The present deposition, I believe, Mr. Chaloner, was commenced on the 14th of October, 1908, and suspended on October 17th, 1908, for nearly three years?

A. You are correct, sir.

Q. If you were so anxious to press this case to a trial why did you so procrastinate your own deposition?

A. My dear sir, I was so ill—by gad, I was at death's door part of that time, almost; It was illness purely, poor health. I was utterly knocked out by Choate's barbarous manner towards me on the stand; he sneered at my using a sofa to lie down on, and the result of it was that I sent for a rocking chair and it almost did me up; it laid me up for three years; and, more than that, all the time I was being examined instead of doing it in a gentlemanly way, as you have, in allowing me to answer questions, he kept up a steady fire, as anybody can tell you who was present in court, of sneers and jeers sotto voce—quite loud enough for people within 20 or 30 feet to hear, and personal remarks calculated to irritate me and "break me up." This was a tremendous strain on me, because I was deposing for a large amount of money and for my reputation, my reputation as a sane man, of common sense, and to be sneered at and jeered at while I was doing that, to be thus "sniped," to be shot at from ambush, was a very trying situation in which to depose. When you add to that the fact that I was being physically tortured, or rather tormented, and grievously pained by this racking I was on in the shape of a wooden rocking chair instead of a heavily padded one, like the leather-armed chair I am now reclining in, with my legs up on another leather padded chair, practically lying down, which attitude I have had all during the weeks of this deposition, and which, owing to Judge Duke's chivalrous attitude towards me of allowing me to talk without nagging me, sneering at me, has enabled me to talk in the extraordinary length that I have (I flag the Docs), I having talked to the extraordinary length

as I have explained on the direct. I didn't begin this. It is not my funeral. The Chanlers began this game, and I am ending it. It is owing to the combined fact that I am sitting at my ease, and being allowed by Judge Duke to depose at my ease without unmannerly interruption which, from a gentleman of his courteous character, would be impossible—it is owing to this combination of facts that I am enabled to talk day in and day out, week after week—on the other hand, I could not stand four days and a half or even two days and a half, more than two days and a half, without going to pieces, physically, I mean, become so exhausted that I was mentally tired, as a man is when he lacks sleep; and I had to stop the deposition and it took me three years to get back my strength; and that is all laid at the door, on the evidence, all caused by Joseph H. Choate, Jr., one of the cruelest individuals I have ever had the pleasure to meet.

Q. The actual time you were engaged in giving your deposition in October, 1908, I find from the record was three days?

A. There or thereabouts, two and a half days.

Q. Could it be possible for a man in your condition of health as you have said, "A-one," in a three days' deposition, to have been so broken down as to take three years to recuperate?

A. That does sound very unusual, but you must remember. Judge, I am afflicted with a very unusual spinal complaint; the doctors have not explained this trouble I have got at all. I have got it on me and have had it on me since '98. It is much better. You must remember that I am invalided to that extent. I am also an athlete—I say that without wishing to put myself on the back—and I can take care of myself in a row, as I have shown, if necessary, even though my spine is affected, peculiarly affected—it does not interfere with the strength of my back, however, when it comes to a tussle, wrestling or fighting; but I cannot assume a certain position; I cannot sit on my pelvis, I cannot sit upright; it jars the base of my spine for some reason; and two and

a half days of that torture—that is what it amounted to—brought about this result; because it was all right when I went into the game—I was physically all right; bar the spine, which was all right, bar the fact that I could not sit upon my pelvis.

Q. Was not the greatest part of that deposition taken whilst you were in a recumbent position?

A. No; it was taken while I was in a rocking chair; the recumbent position was during the examination of my witnesses, then I rested on a sofa. I directed the examination of my witnesses; by which I mean, I had lawyers there to do the talking; but I was whispering into my lawyers' ears, what to ask them; I was guiding and controlling the examination; I had all the responsibility of it; I had selected the witnesses; I knew what they knew infinitely more than the lawyers did; for the reason they were men that I knew, and the lawyers had never met them before, until they saw them that day in court. Therefore, I was the one who had the whole burden of the examination on my shoulders. I stood that all right for the two full days that the examination took place—I was perfectly fresh at the end of the day, utterly unexhausted—because I could tiptoe over to where my lawyers were, whisper in their ears what was necessary to be done, and tiptoe back again, and lie down on my sofa. I always lay down and rested right after this talk, those hints I gave my lawyers, and directions; whereas on my own examination I was sitting in this rocking chair—*I may* have had a chair to put my feet on—but that did not make any difference, because the back of the rocking chair was not inclined as this arm chair—it was perpendicular to the base of the chair; and that forced me to sit on my pelvis, which ruined me, as aforesaid.

Q. It took you, therefore, three years to recover from this—

A. Three days.

Q. Three days' seance?

A. Precisely.

Q. Was that exhaustion mental or physical?

A. Physical entirely in its cause; mental in its effects; to the extent of being sleepy, as I have said. When a man is sleepy he cannot think as clearly, his memory is not as active as when he is not sleepy; when a man is on the point of falling asleep he is liable to forget what he is talking about. I never do that, as this unusual deposition proves; because I am in fine trim. But at the last few hours of that deposition I was very much fatigued and had no flow of language—my flow was nothing like as copious as it is now; and I was sometimes almost at a loss for a word, and would have to think for a word, something that I never have to do, and never had to do; and particularly have not had to do on this deposition, as the amount of words which have issued from my lips in the limited number of hours in which they have, proves—and proves that I must have spoken with great rapidity.

Q. What sort of work did you do, Mr. Chaloner, between October 17th, 1908, and last Fall when we re-commenced these depositions?

A. I supervised my lawyers' work in preparation of filing the brief in court; that was the main work I did; of course, I didn't have much of that to do for the first year, I let up on work for the first year pretty generally, in order to recoup, I was thoroughly exhausted; it actually does me up in a most effective manner to have to sit up straight, particularly on a hard surface; this was a hard rocking chair with no padding whatever; just a rough wicker botton and wooden arms.

Q. Was there any reason why you should not have selected an easier chair if you had wanted to do it?

A. No, none on earth, but I, in ignorance of my complaint, of how dangerous it was to "monkey" with—I ordered an easy chair, if I remember rightly, and it was got—I didn't know that it would be so dangerous in its effects, had no idea of it, or else I never would have done it, most certainly not.

Q. Then why do you charge Mr. Choate with cruelty in making you use such a chair when it was a chair of your own selection?

A. It was not of my selection, it was his selection; for the reason that I had selected a sofa; and I lay down on the sofa, for the first two days during which my witnesses were being examined, and I really practically conducted the examination of my witnesses, as aforesaid, through the mouths of my lawyers; and I rested in the court room, or rather in the banqueting room of the Masonic Temple, where the first part of the depositions were held—I rested on this sofa—Choate went out of his way to sneer, and said in the hearing of an acquaintance of mine, "Where is the sofa?" on the first day that I was to depose, myself; and that made me shy about using the sofa; I didn't want to appear effeminate, a mollycoddle and a malingerer, so I took the lead which Choate had given me, and discarded the sofa, which was my choice. If I had kept the sofa all would have been well. Now, then, since I could not have my choice—I knew I was taking a risk—I did it because Choate had sneered at the sofa.

Q. Why did you select the Masonic Temple as the place to have your deposition taken?

A. Simply because at that time the court, as I remember, was in session; and as soon as the court was out of session we took the court room; I wanted the court room, I wanted it in public, so that my friends in Charlottesville could hear me on the stand and know that I could talk to the point.

Q. Your desire then, was, to be slangy, to hire a hall so that your friends might hear your deposition?

A. Precisely, Judge; admirably put; exactly.

DIET OF PLAINTIFF FROM 1893, 702-707.

Q. Your diet, as I understand it, prior to 1896 was that of the ordinary gentleman of the day?

A. It should be 1893, Judge.

Q. All right, correct me, go ahead, and answer.

A. In 1893 I found I was far healthier without eating meat than if I did; that meat inflamed me and gave me gout, whereas I was totally free from gout if I cut that out, which I did.

Q. You stated that your food in the fall of 1896 and spring of 1897 was confined to waffles and tea. How long did you subsist upon that diet?

A. During from about the middle of December to about the middle of February. I changed it when I came to town because I could not get good waffles, and then took green turtle soup, terrapin, oysters, fish and vegetables. The reason I didn't take those at "The Merry Mills" was that it was inconvenient to get them; it was expensive to have them sent there by express; and I could get waffles as I could get them nowhere else but in Virginia, and I never could get them as good anywhere else.

Q. After leaving "Bloomingdale," what dietary did you follow?

A. Strictly vegetable, strictly vegetable, with the exception of oysters. I ate oysters with impunity when I came to Richmond until about 1907, when they went back on me, and I have never eaten them since. I am not certain of the date—I know it was when the Episcopal Convention was held at Richmond—that is how I locate it—how I happen to remember that—if that is the term "Episcopal Convention," the National meeting of the Episcopal Church in the year 1907, as I remember it—I have not eaten an oyster since and never expect to.

Q. What has been your diet then since 1907?

A. I tried in 1907 to eat meat and I found I could, so thought I could eat meat about three times a week, and I ate it from 1907, from the time of the Jamestown Exposition—I tried it there—broke this rule about vegetarianism—and I ate meat two or three times a week—strictly vegetarian outside of those two or three times a week—until April, 1911, when I found I was emaciating on chicken broth, turkey, chicken and mallard duck, I was losing weight—got fifteen or twenty

pounds below weight—I cut out meat and lived strictly on vegetables, as the doctor's certificate will show, and gained—ran up from 141 to 166. I then stuck strictly to vegetable diet, and then had to eliminate practically all vegetables, and lived on bread and water, as my direct examination states—direct examination of 1911. Recently, I am thankful to say, I find that I can eat meat three days in the week, or possibly four—once a day—provided I eat a loaf of bread some five or six hours before I eat the meat—and also eat half a loaf of bread with the meat—that I can eat mallard duck or game duck—not tame duck—for that is indigestible compared to wild duck—turkey or chicken, and not lose my weight—hold my weight—provided I fast for three days in succession thereafter. For instance, if I eat meat on Saturdays, Sundays and Mondays and Tuesdays I must fast and live on bread and water—not bread buttered—not bread and butter and water—not bread, vegetables and water, or bread and fruit, or bread and candy—but dry bread and water Wednesdays, Thursdays and Fridays. The idea, apparently, is that my system frees itself of the gouty and rheumatic effects of meat on my system during the three days of fast—during those three days of fast I eat two meals of dry bread—I eat every day from two to three loaves of dry bread, those three days, and *nothing else*, and water. That cools my blood, purifies and washes out of my system all gouty and rheumatic tendency, and to my joy and amazement I find *I can* eat meat with good to myself physically, and extreme mental satisfaction, because a good dinner—a good meal—does leave a sense of well-being which bread and water fails to do.

Q. How long since you have commenced this meat diet?

A. My deposition will show, it is during this deposition, Judge.

Q. Well, that is it—that is close enough?

A. Yes.

Q. Previous to that time, how long had you lived upon bread and water with an occasional meal of cheese?

A. From more or less April, 1911.

Q. What are your habits as to sleep, Mr. Chaloner?

A. I require a vast amount of sleep. I require from nine to ten hours sleep. I can do without sleep on occasion, if necessary, and I can sleep at will. For instance, I had to take a very early train, for me, to come here to-day to begin this deposition at 10 o'clock, as I was prepared to do. I arrived here at 9 o'clock. I had some work to do last night; the consequence was that I did not take my clothes off. I didn't undress; for I didn't have the time; and I had about half an hour's sleep last night, which does not interfere with my deposition to-day with ease, but the night previous I had had ten hours solid sleep. I can, therefore, take on board sleep as a camel can take on board water. When a camel has to make a journey of some days without water, over Sahara, it takes on board a lot of water, and I by analogy (I flag the Docs) take on board a lot of sleep, from ten to twelve hours, sometimes even more, before I have to cross a desert of work of, say, twenty-four hours' work without closing an eye for more than twenty minutes or so. Nobody knows the necessity of sleep more than myself, and I go on record and say that sleep is more necessary than food; that it is safer for a man to cut down on his food and eat too little than to sleep too little. It shortens life and leads to nervous breakdown, and the world does not know—physicians do—the average man in the street does not know—the absolute basic importance of sleep; it is more necessary to get sleep than it is to get food, other things being equal. Of course, if a man does not get food at all he would starve to death; on the other hand, if he does not get sleep at all, he is liable to go crazy.

Q. What hours since you left "Bloomingdale" do you choose for your work?

A. The same hours that I had in "Bloomingdale," about ten P. M. to 3 A. M. next morning I sometimes lap over to four or five, and rise never before 12, noon, and generally 2 P. M., which allows me, as you will see, Judge, a most generous leeway for sleep.

Q. I understand, then, that you have practically turned in your case, the night into day?

A. Precisely, Judge, and those are the precise words of Dr. Lyon when he came into my cell in '97 when he said, "I see you turn night into day," words to that identical effect.

DUNN, ALBION, PLAINTIFF'S CONNECTION WITH, 539-555.

I now find I will have to move to North Carolina to answer your question, Judge. Here, I was actually sold out; if you please, sir, sold out by a member of the North Carolina Bar, a member of the Bar of Halifax. This is a monstrous state of affairs, and this will amaze you, sir, as a member of the Bar of the United States, as a member of the Bar of Virginia. This is a secret, this is something that nobody knows about except myself and a half dozen of my intimates, and the judge on the Bench, who was then sitting in the Superior Court, if I remember rightly that is the exact title—of Halifax—Judge Lyon. The situation is one of the most fearful I have ever heard of. It reminds one of the most corrupt condition of English politics at the time of Walpole. You are a well read literateur. Was he not the man who said that "every man has his price"?

Q. Yes.

A. Yes, he was the man, in the time of rotten boroughs, when seats in Parliament were put up and knocked down at auction practically; they were simply in the market for the highest bidder. Rotten state of affairs! And Walpole it was who said that "every man has his price," and I am sorry to say that I have found out from bitter experience that, although Walpole exaggerates when he says every man has his price, I have found if that is changed as I shall change it, it is a true saying, "nearly every man has his price." That is the result of my nearly fifteen years of bitter experience, and that has led me to change the dictum of that "every man has his price." It is incredible what I am about to state at first sight, on my record for veracity in this case; my 180 odd exhibits gives me

standing in court, and, furthermore, I have documentary proof of the rascality of the sale of my case by my North Carolina lawyer. This document is in the shape of a letter in his own hand in reply to one from me by the late Major Thomas L. Emry, of Weldon, formerly of Roanoke Rapids, in which he replies affirmatively to my question, and which affirmation clinches my indictment against Albion Dunn, the name of the discredited lawyer whom I am about to denounce. This man is a young man, not more than twenty-five or twenty-six, or certainly well under thirty, and he is the son of a lawyer that I had employed and of a very honest lawyer. His father's name was W. A. Dunn—his father's initials were W. A. and his last name Dunn, of Halifax, Halifax County—of Scotland Neck, North Carolina, Halifax County. I employed Dunn to take the place of the late Judge Thomas N. Hill, of Halifax, Halifax County, North Carolina, in my case, known as John Armstrong Chanler (as it then was) against the United Industrial Company, my suit against Winthrop Astor Chanler, Stanford White and Thomas T. Sherman, to prevent them from removing money of mine from North Carolina, in which suit I was successful and which suit is of record in this case on the direct. Judge Hill was my lawyer, but he died and I had his place supplied by the late W. A. Dunn. He also died later. Judge Hill had been my reserve army, so to speak, my legal army (I flag the Docs); I had foreseen the possible attempt on my property at the hands of Chanler, White and Sherman and had engaged Judge Hill, and had him all ready on the facts and on the law, ready to bring an action in the shape of an injunction at a moment's notice, on a wire from me, at Cobham, at the Merry Mills. I had a spy in Roanoke Rapids who was keeping me posted regarding the movement of the enemy (I flag the Docs), to use a military phrase. I, therefore, caught them napping and forced them to disgorge, and young Dunn, Albion Dunn—son of W. A. Dunn—stepped into his father's shoes on the latter's death, who had stepped into the shoes of the late Thomas N. Hill, on the *latter's* death. Well, I had this suit and it had gone in my favor and the sum

of money, several thousands of dollars, there or thereabouts, was in the hands of the Court, who had appointed my lawyer Dunn and the lawyer of the other side, one Daniel—Walter Daniel—ex-Public Prosecutor of Halifax County—that is not the title and it is not Commonwealth's Attorney either; they have got some more or less peculiar title down there and I don't remember it, in North Carolina, but it is not District Attorney and it is not Commonwealth's Attorney, as I remember it—but he was the public prosecutor and also was employed in a private capacity for the United Industrial Company, which was used as a stalking horse by Winthrop Astor Chanler, the late Stanford White and Thomas T. Sherman, in this case of Chanler vs. The United Industrial Company, by which I mean it was not the United Industrial Company I was attacking in my suit, but Winthrop Astor Chanler, Stanford White and Thomas T. Sherman. I held the whip hand in the case; I had beaten Sherman, and made him disgorge, and send a cheque down from New York for this money and turn it over to the North Carolina Court. I made a clean win, I had a clear victory over him. The case suddenly unexpectedly came up. I had been given to understand by Albion Dunn that it was indefinitely on the shelf. We had received, as I remember it, an interlocutory decree—it is of record so I will not burden my memory with it after putting it on record—from the learned and upright Judge Jones, of one of the courts of North Carolina, one of the Superior Courts, before whom the matter was tried, and this decree had placed the money in the hands of counsel for both sides, under proper security. All of a sudden the case came up. I am forced to believe by juggling on the part of Dunn and Daniel. I do not criticise Daniel in this matter because he was my legal enemy (I flag the Docs), he was working to beat me, but I do criticise Dunn for entering into what undoubtedly appears to be juggling of the case on the calendar. The case was placed on the calendar so that it would not come up again for trial until the case in New York of Chaloner vs. Sherman reached a termination. But, all of a sudden the case was on the calendar for trial again—

I was going to fight this case through. The case not only included getting this money out of Sherman's hands, but it practically amounted to placing the United Industrial Company in the hands of the North Carolina Courts, as I remember it. As I have said, I have removed these facts from my first line of attack in memory (I flag the Docs), because I have placed it on record and therefore it takes me a little time, and I don't get the facts in all the detail that I would had I not placed them in evidence already. At all events, I was going to use the pending suit, use the fact that I had the United Industrial Company by the throat, by which I mean Winthrop Astor Chanler, Stanford White and Thomas T. Sherman, and had that property which was admitted by Winthrop Astor Chanler on the stand in the 1899 proceedings before the Sheriff's Jury in New York, which he brought to have me declared an incompetent person as well as a lunatic, and himself and the other Chanlers declared my heirs-at-law and next-of-kin "and inheritors of my entire estate" in this said action, Winthrop Astor Chanler said on the stand that the United Industrial Company was worth fully $100,000; the property was so that I had this $100,000 property in my hands in having it in the control of the North Carolina Court. Of course, that was a great lever to use against Sherman, and I determined to use this leverage and not allow the United Industrial Company to get outside of the North Carolina Court until I had extracted a promise and an agreement, a legal agreement, from Sherman that he would continue my allowance, and possibly one or two other points. In other words, I had Sherman on the hip and I was going to make him disgorge. Dunn notified me that the case was coming up, so I was ready for it. Pretty soon he notified me that here was an offer on the other side, and Sherman would give me all that I wanted, would agree to continue my allowance and bind himself personally for the continuation of my allowance, and possibly one other point which, at this moment, slips my mind, for the reason stated—the offer was that if I would take a *voluntary* non-suit—if I would take an undeserved voluntary *non-suit* that he would agree to my

propositions aforesaid. Dunn asked me what I thought about that. I said I was perfectly willing to do that; that I always went for the substance and not the shadow, and if he would give me what I wanted I was perfectly willing to take a voluntary non-suit. Of course, *non*-suit is a black eye, without the preliminary qualifying term "voluntary." Dunn notified me that he had the contract ready to sign. I at once left for Scotland Neck. I came into his office and, to my immense surprise, he was *unable* to find the contract. I thought that was perfectly remarkable, a lawyer not being able to find a paper in his office, unless that office was robbed or burglarized at night, which was not the case. I am slow to suspect once I have given a man my confidence, I am very slow to suspect him, and Dunn had recently been admitted to the bar and had graduated very high, by which I mean he passed a very fine examination, and was complimented by the examining judge on the brilliancy of his examination, and he was undoubtedly a well-educated young lawyer. Of course, he lacked experience, but he had studied diligently evidently and could write an able paper—could draw an able paper. I therefore did not think Dunn was lying to me or trying to sell me out, and swallowed my amazement. I went down to Halifax next day from Scotland Neck. I had spent the night previous at Dunn's house, as I remember it. As I remember, also, he had evaded showing me the contract that night and said, "We will look at it to-morrow morning in the office," so when I went to the office in the daytime, he again dodged giving me the contract by lying to me, on the evidence, and telling me that he had mislaid it, it was mislaid and he could not find it, and he had timed his visit so that there was only a few minutes before train time. Of course, I did not suspect any "game" and did not demand an investigation, and therefore was unable to spend any more time than that, a few moments to look for the paper, but ample time to find my paper in a lawyer's office, particularly when that paper is going to be employed in a case which comes on in twenty-four hours. So we went down the next day to Halifax, and he said that this was the gist of the

agreement, and "this was the agreement" he had proposed for me to sign, and drew it up then and there, and this agreement contained what I have said. He read this to me in the presence of Major Thomas L. Emry, in the hotel in Halifax, and this letter which I have cited as having received from Major Thomas L. Emry, as I have said before—this letter endorsed my statement that this contract contained the said clause, and was read in the hearing of Major Thomas L. Emry. I then went away. The case was to come up that day. Dunn urged on me the utter lack of necessity for my waiting in Halifax for the case to be tried. He said it was coming on this afternoon and I will 'phone you in Richmond the result. I gave him my address in Richmond, the Westmoreland Club, as I remember, and expected an answer. Not a word. I refresh my memory as I move and I recall now that I did not go straight to Richmond; I stopped at Weldon en route, and he was to 'phone me to Weldon, only some ten miles or so from Halifax, possibly not so much as ten—I am now quite sure it is not ten, nearer five. I awaited the said 'phone. Not a word. I then sent word to Dunn to send word to me at Richmond at the above address and went on to Richmond that night—that is, the night after the next day, after my having spent a night at Weldon, as I remember—it was either the next day or that night. I received no word at the Westmoreland Club. I then went on to Merry Mills, Cobham, Virginia, and from there I sent a peremptory wire to Dunn to notify me regarding the outcome of the case. He was long in answering this, some days, and when he did, I found to my utter and absolute amazement that he had sold me out; that he had faked the contract which he had read to me and Major Thomas L. Emry; that that was a false contract, a contract which he never intended to live up to, never intended to draw, never intended to draw that contract; that he lied to me when he said he had a contract in his desk for me to read, to sign, his desk in Scotland Neck, which he read to me in Halifax, which he said he could not find the next day, as aforesaid, just before we took the train from Scotland Neck: that no such contract

existed; that he meant to lie to me and cheated me, and on the evidence to be bribed by Thomas T. Sherman, for a lawyer does not sell out his client except he is bribed. That is the experience of criminal jurisprudence. Lawyers don't cut their own throats for fun. So for a heavy bribe, on the evidence, Dunn decided to do the criminal part of selling me out. I was dumbfounded, amazed and infuriated, naturally. I decided to have nothing more to do with brother Dunn; I decided to "break" him, to have him disbarred. So I took the next train to Halifax ready for war. I was without counsel. Had been sold out by my counsel and had to do my own work, be my own counsel. That appears to be my role in legal life. The evidence shows that it is not my choosing, far from it. Grim necessity and nothing else forces me to do that. I went to Halifax where the court was their in session, still in session, and Judge Lyon was stilling holding court. He has since left the bench and is now engaged in his extensive private practice. He was a most upright and learned judge, admired by the whole bar, and his resignation from the bench regretted universally. I took the desperate step of going straight to Judge Lyon—I did not know the gentleman—introducing myself, catching him in a corridor of the hotel at Halifax, and telling him, "Judge, I have got something of the utmost importance to tell your Honor; I must throw myself upon the charity of the court; I am a member of the legal profession, but not a member of the Bar of North Carolina. I have been sold out by my North Carolina lawyer, one Albion Dunn, of this court, practising before you, and I am forced to take the part of my own lawyer." Judge Lyon, of course, under such a criminal charge, arrested his steps in the corridor, and said, "Step into this room, please, and tell me what you have to say, sir." The room was a ladies' parlor, fortunately at that time totally vacant, and during our whole conversation fortunately nobody came in. It was as private as any private office, not a soul, male or female, entered during our half hour of rapid conversation. I briefly told the judge the facts as above stated. He was amazed I infer. I then after I had told him the whole thing

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took the only steps possible looking towards the disbarment of Dunn, and exploiting the whole thing in public. I then thanked the Judge for his great courtesy, and most unusual courtesy on the part of the Judge when he was on his way to the bench, or almost on his way—I don't mean by that that this made him late—he was very busy and was walking hurriedly through the corridor when I happened to hold him up, shall ever remember Judge Lyon—(his full name is on the record in the direct) as being the Judge in this case—shall be forever grateful to Judge Lyon for his most judgelike and lawyerlike in the best sense of the word—of the two words—generous attitude towards me in giving me his attention for twenty minutes. On thinking the matter over and looking into the law I saw that I could do nothing to upset the situation—that is, it would be a manifestly difficult and long process to upset this, *because my lawyer, with my apparent consent, had agreed to this agreement.* Any lawyer will recognize that It was a fearful state of affairs. It would take nothing short of legal dynamite to blow up that agreement, signed by my lawyer with full power to represent me, for I had given Dunn that; I had given the rascal that; that was his game and that is why he knew he could "do" me; he knew he had me in his power and he could do it as my attorney; he knew I would never sign any such paper, because I never sign any paper without reading, and therefore he knew the only way he could win his game was *to get me to let* him to sign the contract, so the rogue did that, and the record stood in the court at Halifax; as Judge Lyon knew he had signed the decree agreed to by counsel for plaintiff, John Armstrong Chaloner, or *Chanler* (as it was then). It was almost an impossible case to move, as any lawyer will recognize; so I determined to take a drag and drift means of squaring myself by having Dunn disbarred; but I try to be an active practising Christian, and mercy is one of the chief tenets of the Christian religion—"do unto others as you would they should do unto you"; and Mrs. Dunn—Dunn's mother—had recently been made a widow—and also because she was a good Christian woman—as I said,

I visited Albion Dunn at Scotland Neck and had been in
duced to his mother, and out of gratitude to the exce
service done me by Dunn's father—W. A. Dunn—and ou
respect for his mother and her grief as widow, and ou
respect for her as a woman, I decided to sink, Judge D
this crime which has been perpetrated, and I have sun
and this is the first time, years after, that this thing is
mentioned, and I only do it because it is dragged out o
on the stand; it is done with great reluctance. This case
settled about seven years ago, about 1905, there or thereab
As I say, it is on record and therefore don't burden my m
ory with it to the exact detail now—1905, thereabouts—s
years ago. I have kept this quiet, and of course if I
going to do anything about it I would have done it w
it was fresh, and therefore I can well be believed to be
cere, as my record shows I am always sincere; that I dec
to swallow my grief, swallow my defeat—defeat unmeri
because I had not been bested—I had simply been betraye
Albion Dunn, and this young rascal had victimized me
sold me out, on the record, as the letter which I have in
safe at the Merry Mills from Major Thomas L. Emry,
ceased, proves. He heard this agreement read by Dunn
which the items were mentioned that he was to agree to,
he actually changed those items, changing them as the re
will show, at Halifax, because the agreement which D
signed was an agreement which absolutely swept away
hold I had on Thomas T. Sherman, on Winthrop Astor Ch
ler, on Stanford White, and absolutely degraded me. H
degraded me? Why, it made me accept a non-suit, Ju
Duke, if you please; it did not make me accept what I
particularly stipulated, a voluntary non-suit, but I accep
a non-suit according to the blackguardly, villainous, tre
erous agreement of Albion Dunn. A lawyer, sir; a reput
lawyer was made to appear to agree to a non-suit, whe
was the victor in this fight. I had already beaten Sher
in court in Halifax, had taken money from him—it was
in the hands of the court, or rather in the court's offic

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Dunn and Daniel, counsel for both sides; this was an arbitrary engagement; as I said this juggling of the calendar was done by Daniel and Dunn revamping the case which, according to the interlocutory judgment of Judge Jones, aforesaid, was not to come up again until the matter had been decided in the New York proceeding of Chaloner against Sherman, or won. All of a sudden it appeared on the calendar. This was a crooked scheme initiated by Sherman who, through Daniel, had found that Dunn was "getable," was purchasable, could be bought for Sherman, Sherman's money, which was my money, could buy that young man to betray me; and therefore, I stand to-day on the judgment aforesaid, signed by Judge Lyon, as having voluntarily agreed to a non-suit, a naked, disreputable non-suit. When a man is non-suited it is the greatest disgrace that a lawyer can have, outside of crime; it is a disgrace to his intellect, it means that he has not made out a case, he is no lawyer, it means that he is an ignoramus, and the greatest disgrace outside of a crime, and criticism on his honesty that a lawyer can have is to receive a non-suit. And here, if you please, Judge Duke, I stand on the record, in the Halifax court of record as having agreed to a non-suit; a most disreputable thing to agree to such a thing. There is the record. Nobody's record is better, stands higher and speaks more eloquently, and—yes—I point to this, point with pride. I point to this too, that I am and as proof of that I am practising Christian, for nothing in the world would have induced me to forego my justification, and removing from my record as a lawyer, and reputation as a lawyer the stigma of having been guilty of non-suit, and yet I did. I swallowed that and stood as an ignoramus and fool before the Bar of North Carolina in this matter, and I was willing to stand for that for the sake of a widow, and knowing that I was following out the teachings of Jesus Christ; it was out of pity for her, but I did it, and it is the record and I did it years ago; it took place seven years ago; it is only taken up now because I am forced to tell the whole truth on the stand—I always tell the whole truth anyway—but I

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am *forced* to speak to be more precise; I am forced to speak about a matter which I had buried in oblivion forever; and it is with deep regret that I have to do it now, for the sake of the widow, and I am comforted by the fact that she has recovered to a certain extent from the great grief she suffered at that time, from the loss of her husband, for time marvelously heals all wounds, for I do not mean to say by that that she has gotten over the death of her husband, but has gotten over the poignant grief of her widowhood under which she had suffered. That, of course, she will bear through life, and that is the only thing that comforts me now in having to give her this great blow which I am forced to do,—for brilliant man as he is, he is disreputable. I, when I discovered this state of affairs, wrote Dunn a letter, of which I have a copy in my letter press, denouncing him as a crook, as a shyster, as a thief, as a villain and rascal of the deepest dye, who should be disbarred and kicked out of the bar of North Carolina and out of the society of any honest self-respecting man. I denounced him in the strongest terms and have a copy of that letter. Does he reply? He replied in a way that all criminals reply. He said nothing, practically. This was the gist of his reply, if you please, Judge Duke, he said, in effect: "I have received your letter. I am sure that when you are in a calmer frame of mind and when you have considered the matter more fully you will regret the heat with which you have written and write in calmer tones," some such folderol as that, in reply to the accusation of thief, of being a liar, dog, and crooked attorney and seller-out of a client, on the evidence. He could have had me up for libel if this were not true. Not a word did he say to that.

FLOURNOY, PROFESSOR THEODORE, ("SPIRITISM AND PSYCHOLOGY") 671-676.

I find that this system of psychology which I follow is a recognized system—I didn't know it before—never saw it in print before—it is called "The Diabolic Hypothesis"—if

you will allow me to refresh my memory on that phrase one moment by referring to the book from which I quote—a book which I got the first day on the stand in the cross-examination—here it is—entitled "Spiritism and Psychology"—it is a book of over 300 pages—about 350 pages—written by that great psychologist Theodore Flournoy, Professor of Psychology at the University of Geneva (Switzerland), author of "From India to the Planet Mars," etc.; this book was published October 11, 1911, by Harper & Brothers, Publishers, New York—and is translated into English; I read a review of it and sent for it as soon as I read of it, and in the preface of that I read. Before I quote I will say that Professor Flournoy is thoroughly opposed to the hypothesis of Spiritism or Spiritualism, as usually called; he has made a scientific investigation of it and disbelieves in it; and this is how he explains it:

> "The greater part of these phenomena are, without exception, easily explained by mental processes inherent in mediums themselves and their associates. The state of passivity, the abdication of the normal personality, the relaxation of voluntary control over the muscular movements, and the idea—this whole psycho-physiological attitude, where the subject is in the state of expectancy of communicating with the deceased—strongly predisposes him to mental disassociation and a sort of infantile regression, a relapse into an inferior phase of psychic evolution, where his imagination naturally begins to imitate the discarnate, utilizing the resources of the sub-conscious, the emotional complexes, latent memories, instinctive tendencies ordinarily suppressed, etc., for the various roles it plays. This is what we might call the psychological theory of mediumship, as opposed to the diabolic theory held by Catholic theologians and the spiritistic theory of the intervention of the dead."

That is why I refer to this book; I called it the "Diaboli Hypothesis"—the words used by Flournoy are "diaboli theory." Now, that Professor Flournoy with his eminen knowledge and world-wide reputation has recognized tha this is a school of psychology, namely, this diabolic theor held by Catholic theologians and by Protestant Episcopalian as well, by those at least who are thoroughly orthodox an believe that Christ meant what He said, in effect, "Your ad versary, the Devil, goeth about like a roaring lion, seekin whom he may devour. Watch and pray, therefore, lest y fall into temptation."

Since Professor Flournoy had endorsed this school o psychology by giving it the name the "diabolic theory, which, of course, means the belief in an active personal Devi *which is the belief par excellence of the Roman Catholi Church;* whereas in the Episcopal Church some people be lieve it and some don't but all Roman Catholics are force to believe that, naturally, to be in good standing in tha church; and now that that hypothesis of Jesus Christ's recognized as a school of psychology, I boldly state that m school is the one which follows the school laid down by Jesu Christ. I have vaguely hinted at that in the said X-Facult or Pythagorean Triangle of Psychology—I have waril hinted at it for the very good reason that before I though I had the authority of Professor Flournoy I was not goin to take the risk of giving out and saying that that was m school of psychology; *I didn't know it was a recognize School;* but now that I do, I give it out boldly, and say tha the diabolic theory is mine; undoubtedly I follow the diabol theory, and believe in a personal Devil, and that he bese us at all hours of the day or night, when we are awake, po sibly when we are not awake, and works us for all he worth. I have hinted at the Devil in using the phrase "Tem tation-Arguer." I say briefly, in said "X-Faculty, or, Th Pythagorean Triangle of Psychology":

> "We are all aware that the workings of conscien are automatic. God knows we do not desire overwo

upon the part of conscience. Whether we desire overwork upon the part of Temptation-Arguer is another question; for forget not that Temptation-Arguer never brings anything but pleasure in *his* hand."

There is my veiled reference to his Satanic majesty under the pseudonym, "Temptation-Arguer." That is my theory, that all temptations are the direct result of the Devil or his angels, and on that I stand clear and distinct, as stated by Jesus Christ, and I am supported in that by the Roman Catholic Church and by those portions of other churches, Christian churches, which believe in a personal Devil, or those members of other portions of the Christian Church which believe in a personal Devil; and I now find from Professor Flournoy's recent book aforesaid, "Spiritism and Psychology," that that is a recognized school of psychology, called "The Diabolic Theory." *This is original with me, because the Roman Catholic Church goes at it from a religious point of view, whereas I go at it from a purely scientific point of view;* and in that way it is distinct from the Roman Catholic theory, science and Roman Catholicism not being hand in hand. Far from it. I do not wish by that to cast any reflection upon Roman Catholicism; and Roman Catholics would not like to have their system called a psychological system—they would prefer to have it called "A Theological System," I have no doubt; and it is with them a theological system; they believe that because it is handed down in their section of the Christian Church from generation to generation as the teachings of Jesus Christ. *I go at it from a scientific standpoint, and have come to that conclusion from scientific experiment wholly divorced from anything religious whatever.* For that reason, I say, that my *brochure* is original; and also the fact that this label for the Roman Catholic system of theology, namely, "Diabolic Theory," was only printed around October, and this book, or rather this pamphlet, was printed in the early summer of 1911.

(Mr. Duke: We are constrained to except to the reading of any book in answer to questions, and for that purpose except to so much of the above answer as gives reading from the book.)

Q. So I understand, Mr. Chaloner, with all reverence which both you and I entertain to the God man, you consider that your X-Faculty pamphlet places you along with the Man Christ as originators of two systems of psychology?

A. No, sir. Far from it. *I follow His system, that is all. I am original only in calling His system a Psychological system;* His system was originally called a religious system; *I am original in having discovered that system for myself; from a scientific angle, however,* from a purely scientific angle, and ending up in a religious rite, in which this scientific theory was contained as a religious theory, or rather, the statement of Jesus Christ.

Q. Think, Mr. Chaloner, what I am trying to get at—

A. Yes.

Q. I don't for one instant suppose that you place yourself on a parity with Christ, but my question, probably awkwardly put, is that you think in your pamphlet you have originated a system of Psychology which, from its standpoint, is alongside of the Theological System, although, of course, not on a parity with that established by Christ.

A. To a greater or less extent, Judge, yes.

Q. Do you consider, therefore, the X-Faculty pamphlet a valuable contribution to scientific Psychology?

A. Considering its origin, I consider it highly valuable—considering the fact that it was written by the X-Faculty itself; it is unique in value as a Psychological document.

FORTY THIEVES OF "BLOOMINGDALE," THE, 613-616.

Q. Was not Dr. Lyon and other physicians polite and considerate of you while you were there?

A. Dr. Lyon was the quintessence of politeness and consideration, as I have stated at length and spread at large on

Q. Do you suppose, Mr. Chaloner, that these men knew, these men or any of them knew that you were an inmate of "Bloomingdale"?

A. I have no doubt of it. The year books of the Society of the New York Hospital on file in this case, show a most minute account of everything that goes on in "Bloomingdale" of all the cases under the charge of the physicians there; and it is incredible to suppose that an institution which had such a microscopic and thoroughly orderly and businesslike and scientific array of medical features would omit an equally microscopic, orderly and businesslike and scientific array of anything which the money I paid, and which makes the mare go, and permit it to be less carefully looked after than this medical end; and for that reason, the fact that I was the star patient in "Bloomingdale" the last years I was there, the highest pay-patient in the institution, certainly, in all truth, it strikes me that they did. I represented an income of over five per cent. on $100,000 to them from the Spring of 1897—I was forced to pay $100 a week, without counting extras; that represents five per cent. per year and over on $100,000.

Q. Your idea, then, is that these gentlemen were aware of your being a patient in the hospital and keeping you there in order that the hospital might make money out of you?

A. Yes, holding onto me as the goose that laid the golden egg—precisely.

"FOUR YEARS BEHIND THE BARS OF 'BLOOMINGDALE'," 654-655.

Q. You are, therefore, positive in your conclusion that this was a plot deliberately formed to freeze you out, and that you foiled it by publishing your book?

A. On the evidence there is no other conclusion possible.

Q. How many copies of it have you disposed of?

A. Not many because I didn't have time—didn't have the

the direct. The others were more or less sneaky—*one* of them was *not* sneaky, but all the others were sneaky, and spying, and doing their best to get me to admit I was insane. They acted like quacks, and Dr. Lyon acted like a gentleman.

Q. Now, you have spoken of the Governors of the New York Hospital Corporation as the "Forty Thieves of Bloomingdale"; and in one of your depositions you have stated that they are a body of conspirators; are as dangerous, and on the record, as relentless as cruel, as inhuman, as were the murderous robber barons of the Rhine, of the Dark Ages; murderers, not that they cut the throats of their victims, but that they murder their intellects, etc., etc. Is it not a fact that those officers or governors receive no pay whatever for their services, whether legal or otherwise.

A. These men own the Society of the New York Hospital, sir.

Q. Do I understand you, then, to charge all these gentlemen who, I believe, are men of high standing or reputed high standing and character in New York, with maintaining an institution for the purpose of imprisoning sane persons as insane, in order that they may make money out of it?

A. Undoubtedly, sir.

Q. Your belief, then, reiterated after my cautionary question is, that men of the standing of Joseph H. Choate, Sr., Cornelius N. Bliss, Hermann H. Cammann, George G. Haven, George S. Bowdoin, Augustus D. Juilliard, Waldron Post Brown, of Brown Brothers, William Warner Hoppin, Edward King, William Alexander Duer, Edmond D. Randolph, Howard Townsend, James William Beekman, Elbridge T. Gerry, Francis Lynde Stetson, Phillip Schuyler, George F. Baker, Henry W. de Forest and George G. DeWitt, are guilty for the purpose of filthy lucre, of the hideous crime of maintaining an institution for the imprisonment of sane persons as insane persons, in order that they may make money out of them?

A. I am regretfully forced to conclude that on the evidence.

money to advertise it long enough; I can't tell, a hundred or so, two hundred possibly.

Q. The book, therefore, as a money-getter has been a failure, but a plot-foiler has been a complete success?

A. Well put, Judge.

HILL, HON. DAVID B., PLAINTIFF'S CONNECTION WITH, 513-520.

Q. You did correspond, I believe, however, whilst in "Bloomingdale" with Governor David B. Hill?

A. Yes, but as I have indicated, David B. Hill has been "got at" early in the game by the Chanlers—he was safe for them.

Q. Your judgment then, is, that Gov. David B. Hill had practically been bribed by the Chanler faction, as you call it, to prevent him from doing his duty as a lawyer towards you?

A. That is my regretful conclusion on the facts and on the evidence. I do not know that any money passed; it need not have been money with people as rich as the Chanlers and as prominent; the fact that he had their good will would be a very effective bribe; their goodwill and a hint dropped that any future litigation, in any future litigation Governor Hill would be employed by them, which he was, as I have said, in the United States Supreme Court case concerning the Laura Astor Delano inheritance tax case, when he was employed by the Chanlers, as I saw in the public prints.

Q. As a lawyer, are you not aware, Mr. Chaloner, that such conduct on the part of Gov. Hill would have and should have rendered him liable to the contempt and disgust of respectable people?

A. Yes; but Gov. Hill felt, as everybody else felt who were "in the know," that I was a doomed man, that I would never get out of "Bloomingdale" alive, and that Gov. Hill would never have to reckon with me; that I was "a dead cock in the pit," as had been everybody since George IV

founded "Bloomingdale"—nobody had ever escaped from that institution; it had a severer reputation than Sing Sing, than the Bastile, than of any prison on earth that I know of; that nobody had ever escaped. People had got away for a day or two, but were always caught up with, through the man-hunting facilities and dog-sleuthing which "Bloomingdale" controls through its keepers and through the police, so that it was a foregone conclusion that any man who had once entered the portals of "Bloomingdale" could write over his cell what stood at the portals of Dante's "Inferno": "All hope abandon ye who enter here."

Q. Did you ever have any interview with Gov. Hill whilst in "Bloomingdale"?

A. One interview, yes, in the presence of Mr. Arthur Brisbane, now the editor of the New York "Evening Journal," and at that time editor of the New York "Evening World," or rather of the New York Sunday "World"—Sunday Magazine—if I remember rightly; certainly he was on the "World" and the late Joseph Pultizer's right hand man, as he is to-day the right hand man of the Hon. William Randolph Hearst. That interview was set forth at large in an article mentioned on the direct, by Mr. Brisbane, published in the evening "World" under date of October 13, 1897, the evening of the day that the article appeared in the New York "Press" which stated that I was in "Bloomingdale" and a paretic; Mr. Brisbane wrote this article off-setting the false attack on me in the "Press"; and had visited me in reply to a telegram which I had sent him before I went to "Bloomingdale," and in this article he states that I argued matters with Gov. Hill directly, lucidly and as any other sane man would, to that effect, and for about two hours, in that neighborhood, and appeared absolutely sane. Brisbane saw me twice, once by himself, and then once when he brought Senator Hill at my request there; Senator Hill only came there because I clubbed him into coming there by holding the New York "World" as a club over his head; I knew Hill was no philanthropist, he was a politician of the most pronounced

type, and cold blooded, and absolutely self-centered, and I knew he would not make a move unless he was forced to, so I forced his hand by bulldozing him into my cell through using the New York "World," knowing that he would do anything that a large paper would tell him to do for fear of getting the enmity of that paper. I was right in my prognostication, for Mr. Hill came to "Bloomingdale" all the way from "Woolferts's Roost," Albany, on the strength of a wire or 'phone message from Mr. Brisbane, as I remember it, without further to-do.

Q. Did Mr. Hill, at this interview, agree to undertake your case?

A. No, but he told me he would give it full consideration, and, being an officer of the court, knowing what he did know after the conversation I had with him, that there was fraud, palpable perjury there, and that all I demanded was an investigation of the statements I made to him, to irrevocably prove the accuracy of my statement, and who as an officer of the court should without a fee, and he knew he would get his fee frem me, he knew I was financially capable of it, should have taken action in a case for the sake of the legal maxim, "it is a fraud to conceal a fraud," and therefore Senator Hill became part and parcel of this conspiracy by concealing this fraud and dropping the case, thereby committing a fraud in the eye of the law. He knew perjury had been committed there and I gave him absolute proof of it and as far as the evidence went, and all he had to do was to investigate the proof which I gave him and he would have seen and known whether I was telling the truth or not, but he didn't do that, for if he had he would have seen I was telling the truth; if he had he would have seen there was no possibility of doubt; that I was correct; and under any circumstances he should have investigated did he have any doubt; in that event he would have known there was a fraud: that I had had no opportunity to appear and be heard and there was perjury and Mr. Winthrop Astor Chanler had never seen me at my "home in Virginia," as was said in con-

nection with the falsely alleged allegations concerning acts and words of mine, and was sworn to by Mr. Winthrop Astor Chanler as to his own knowledge in the commitment papers; and Senator Hill would then have known a fraud had been committed, and it was his duty as an officer of the court to say nothing of a former United States Senator and Governor of the great State of New York; it was his duty to stop the iniquity, instead of which Gov. Hill "laid down" on me.

Q. Did you have any conversation, any correspondence with Governor Hill after this interview?

A. Yes, he had promised to send me a certified copy of my commitment papers which I had requested him to do; I had in my possession a copy of the commitment papers which I had, so to speak, hypnotized out of the authorities there. I am given to understand that nobody is ever shown his commitment papers, but I called in the understrapper known as "Supervisor," really the Chief-of-keepers, and told him that I desired to have at once, and without any delay my commitment papers, knowing they were on file there, and I looked at him hard—good and hard—and he brought them,—and my keepers, all of them, expressed the greatest surprise that I had succeeded in this, as they never heard of such a thing, of parties being allowed to even look at for a moment their commitment papers. Once I had them I kept them, but I wanted a certified copy for fear that the Commission in Lunacy, or some of their understrappers or somebody else, might tamper with the record if they knew I had a copy of it and was basing a lawsuit on it, and I was afraid that they might forge a new record and rectify the weak points in the old one in which case, of course, my name would be "Dennis," so I wanted a certified copy of my commitment papers as a foundation stone for my brief, for if I got a certified copy I knew they would not dare to tamper with my papers in that event. That is one thing Hill did for me, but he didn't do it until I lugged it out of him, so to speak, for he didn't make good. I was in there weeks after the interview and I didn't hear a "boo from a goose" out of him; no word came from

"Woolfert's Roost" and it was only after writing him which letter he did not answer. As I remember it, I wrote him—the correspondence is on file in the direct and will prove all this—as soon as I put a thing on file, as I said on direct I dismiss it from my memory to a great extent, and therefore I do not now without taking time to refresh my memory, recall sufficient of it to state on oath whether I had previously written Hill a letter previous to my telegram; I think I did; the direct will take care of that. But, at all events, the telegram, in the direct, was what brought this certified copy; and I even forget now the wording of the telegram; it would require time to reframe that telegram, but that telegram brought the certified copy of the commitment papers from Gov. Hill, and he wrote me a letter which is also in evidence on direct in which he notified me that he could not take the case—gave no reason for it—no reason to a lawyer that would hold water; it showed that he had been "got at" then; that he had been bribed, had been "influenced" into leaving me to die in "Bloomingdale."

Q. Did you have any letter from Gov. Hill declining to take any further steps in the case?

A. Yes, that is on file in direct, signed David B. Hill, in his own writing, his peculiar microscopic hand, one of the smallest hands of any politician of his day, a clear distinct hand, but microscopically small; you could get in one of his words well inside of a postage stamp, and you could almost get the whole signature, "David B. Hill" on a postage stamp, almost, if not quite.

McCURDY, DELOS, PLAINTIFF'S CONNECTION WITH, 520-527.

Q. You did have, however, correspondence with Mr. Barnes, Mr. Frost, Mr. Miller and Mr. McCurdy?

A. No reply from Mr. McCurdy; I wrote him one letter which he did not answer.

Q. So these gentlemen were put in full possession of all the facts in regard to your commitment to "Bloomingdale"?

A. Yes, and they all acted on them, with the exception

of McCurdy. Mr. Miller acted like my faithful friend, which I believed he would and which he proved himself to be. He used every endeavor to extract from Delos McCurdy—whether or not McCurdy had taken my case, McCurdy gave him to understand by inference that he had—Miller broached it to him and spoke to him as though he, McCurdy, had accepted a retainer from me, and McCurdy never corrected Miller, never "put him wise," and Mr. Miller was absolutely and grossly deceived by that; spoke to McCurdy with perfect frankness, with the frankness that one man speaks to the lawyer of his friend, that one speaks to another when he has perfect confidence in the other, and McCurdy "played him along," pumped Thomas Jefferson Miller, through no fault of Thomas Jefferson Miller's, and in a most dishonorable way, extracted everything that Thomas Jefferson Miller knew about me, and, on the evidence, *gave it away*, for the report got out that I was writing, that I was communicating with the outer world. One of my keepers told me after I had written McCurdy, words to this effect, "I heard, Mr. Chanler (as it was then) that they say here that you are writing to people on the outside." I was amazed. I didn't know where the leak could be, and the evidence is that the leak was from Delos McCurdy—that he was the leak; since he acted in this hostile way, in this treacherous way, under false pretenses, of ingratiating himself into the confidence of my faithful friend old Thomas Jefferson Miller, of the Manhattan Club, and leaving me to rot in "Bloomingdale" and even refusing to answer a direct polite appeal, on file in the direct examination, to please tell me whether or not he would take my case which letter was not written for months after I had employed or attempted to employ McCurdy through George H. Barnes, aforesaid, who had seen McCurdy and given him my papers—given McCurdy my papers—and asked him to take my case, and McCurdy had told him, as the correspondence on direct proves, that he would give the matter due consideration and he deceived Barnes as well, for Barnes told me in the letter, in effect, "McCurdy is a very busy man," which letter is in evidence on the direct, and McCurdy fooled Barnes,

giving Barnes to understand that he was working diligently on the case, whereas, he was not doing anything of the sort, but whereas he was simply pumping Barnes and getting all the news out of him about me that he could, the motive of McCurdy being, on the evidence, that he had some client, some millionaire, who was on the Board of Directors of "Bloomingdale," who was one of the "Forty Thieves of Bloomingdale," and knew what would happen to his client if I ever got out, since he had sufficient of my writings to know that I would strike from the shoulder once I did get out and spare nobody, so McCurdy, like a crafty practitioner of New York City, shielded his millionaire client at my innocent expense, and at the cost of his own reputation as an honest lawyer.

Q. Your opinion is, then, that McCurdy deliberately betrayed your confidence and trust because he represented some wealthy client on the Board of Directors of "Bloomingdale"?

A. Yes, Judge, I am regretfully forced to come to that conclusion.

Q. Has not Mr. McCurdy always been and is he not now a lawyer of the highest standing and integrity in the City of New York?

A. None more so, none more so, and that was why I took him, but the marvelous thing about my case, Judge, is, that these men I took, whose reputations have been absolutely immaculate, *proved to be crooks under the fire of temptation;* that is the marvelous, that is the disappointing, that is the abominable hideous thing about human nature that I have found; that men with most splendid reputations turn out to be crooks in disguise when placed in the flame, in the blowpipe of the fire of temptation. That is it. That is what makes me so cynical—not so pessimistic—I am not that. The distinction between cynic and pessimist is this, of coure: The pessimist denies the existence of anything ideal in human nature. denies the existence of ideal men, or a man who even attempts to be ideal, attempts to live up to his higher mind and to be honest, and a good man, and a worthy citizen of this grand Republic. A cynic, of whom the chief is Diogenes, a cynic believes in the ideal man, aims at being an ideal man himself,

and he is only too sadly convinced of the rarity of that bird, ideal man, and he does not *expect* to find an ideal man; he doubts the prevalence of that breed, and looks upon him only as an exception to the general humdrum, monotonous rule of selfishness and weakness, *criminal* weakness, in miserable, wretched, when taken by and large, human nature.

Q. You have been, then, singularly unfortunate, Mr. Chaloner, as I take it from your answer to my last question, in the lawyers you attempted to employ whilst in "Bloomingdale"?

A. Absolutely so.

Q. One minute!

A. I beg your pardon.

Q. And in your judgment, therefore, these men, though professionally of high standing as shown, and as professional men, united with your persecutors and attempted to continue your imprisonment—what you have termed your imprisonment for life?

A. I am sadly forced, on the evidence, Judge, to that conclusion.

Q. Your examination in chief, Mr. Chaloner, has disclosed that, in your judgment, the lawyers of the Bar of New York City—I emphasize *City*—to use your expression, are nothing but thieves, shysters and persecutors of yourself and other men who have money. Now, to be perfectly frank, Mr. Chaloner do you think that you are fair in that criticism of the Bar of New York City?

A. I am forced to say I am, for this reason: I rest on the speech of ex-President Whittaker of the State—not *City*—of the State Bar Association of New York. That gentleman made the startling statement that over fifty per cent. of the litigated cases in New York were perjurious; that the lawyers of New York, over fifty per cent. were criminals; that they were suborners of perjury. Understand, Whittaker did not use that strong language that I have given; he did not say, being a lawyer—he did not say—he did not draw the inevitable conclusion from the state of facts which he stated in his speech—he left that to the imagination, naturally—but what he said implied

irredeemably the conclusion that fifty per cent. of the lawyers of New York were criminals, because they did, according to his statement, suborne perjury; that the lawyers of New York were simply Fagins, simply teachers of the art of picking pockets—were simply professors in a college of thievery and crime; that they taught their, otherwise harmless innocent, clients to perjure themselves to buttress up a weak case. That is the statement read in the open before the State Bar Association by President Whittaker in the year 1898, there or thereabouts, and it was so terrific, so startling, that the New York "World" wrote an editorial on it, which is in evidence on the direct and which I have quoted, the speech and editorial being in my book "Four Years Behind the Bars," or the "Bankruptcy of Law in New York." I do not quote the whole of President Whittaker's most able and startling speech, but I quote the most dramatic and the most interesting and eloquent parts thereof. It was a most admirable speech. It was really a piece of Ciceronian eloquence; it was worthy, almost worthy to rank, if not quite, with one of the marvelous arraignments by Cicero of the lawyers of his day, or of the people of his day, the body of men of his day. Verres, for instance, against whom he wrote one of his best orations. Verres was a Governor of the Province which he robbed. Most tyrannical. He was as big a grafter as the late Matthew Stanley Quay, as big a grafter as Charles F. Murphy, "Boss" of Tammany Hall, or Richard Croker himself, ex-Boss; and Verres received the thunders of Cicero's eloquence to his own ruin, and to the perpetuity of glory, eloquence, literature and the Bar of the world; Cicero was the most eloquent and universal member of the Universal Bar of the World. Cicero was a coward; as a man there was nothing, as has been well said, Roman about Cicero but his death; that he was man enough to put his head out of the litter in which he was being carried by his slaves in flight, put his head out of the litter at the command of the Executioner and have his head lopped off by the sword; he did that, though a mere human, and with Spartan, Roman self-control and self-domination and calm; otherwise Cicero was a coward, and he was very much of an old woman, and very

much of a Pecksniff and hypocrite, and seeker after praise and public laudation; a man who was patting himself on the back all the time without cause, and his letters show that; he was perfectly ridiculous. He was one of those men whose brains were far superior to his heart and character. I state this so that I won't be misjudged and be said to have an exaggerated idea of Cicero.

MORRIS, HENRY LEWIS, PLAINTIFF'S CONNECTION WITH, 568-573.

Q. Your brothers, Mr. Chaloner, as far as money and personal obligations are concerned, are men of the highest character, are they not?

A. Absolutely spotless.

Q. Therefore only the lapse from the paths of rectitude and virtue which they come in contact with caused them to take that view?

A. Precisely, Judge. The temptation is too great; they fell by the wayside.

Q. Now, being men and women of very large means, do you really, Mr. Chaloner, think your brothers and sisters had your money in view when they attempted to commit, or took means of having you committed to "Bloomingdale"?

A. I don't think, Judge, they would have thought of that had it not been for the head devil in this conspiracy, namely, the abominable Henry Lewis Morris, who adores money, worships money, and grovels before it. I saw that man actually demean himself debase himself to the extent of kissing another man, kissing his client's face, in order to ingratiate himself with him. The client he kissed was Arthur Astor Carey, right after Arthur Astor Carey had doubled his fortune by the death of Henry Reginald Astor Carey, his lamented brother, whom I loved and who subscribed five thousand dollars to the Paris Prize Fund, and promised to subscribe $25,000 more; and would have done so had not Henry Lewis Morris been unlawyerlike enough to insist upon Henry Regi-

nald Astor Carey's postponing and putting off the making of a new Will, during which unlawyerlike interregnum Henry Reginald Astor Carey died. Henry Lewis Morris on meeting Arthur Astor Carey at the Everett House shortly thereafter went up to Arthur Astor Carey—both of them are very cold-blooded men—Henry Lewis Morris walked up to Arthur Astor Carey and kissed him on the cheek. I never saw such a sight in my life. A lawyer kissing a client in cold blood, so help me goodness! I want to correct myself here and say, that I was not explicit enough here: I should say "a lawyer kissing a male client." Many a lawyer would like to kiss an attractive female client, but a male client is disgusting. It is horrible! and that is what makes me exclaim. I could not believe my eyes when I saw the cold-blooded, calculating Henry Lewis Morris in his goo goo, awkward, disjointed way, slouch up to Arthur Astor Carey and kiss him on the cheek. I could not believe my eyes, but I had to, for I heard the noise; I heard the smack, and I was disgusted and shuddered. This dog! this Henry Lewis Morris! this horrible swindling rascal and creature, always called real estate "property," over which word he lingered when he pronounced it, with an idolatrous love. "Property" to a New York real estate lawyer is his God, and he always *calls* real estate "property," and that is all he does call property. "A nice piece of prop—erty" is the New York lawyer's way of speaking of a piece of real estate; and Morris would instill this adoration of bricks and mortar and earth, to which we must all return when our summons comes, he would instill this adoration of the material into the Chanlers, male and female, and he has been doing this ever since, as each one of them became of age, and came into the zone of his infection, of his moral de-moralization—of his degradation—and he was the cause; I blame Hank Morris, that is his name among his familiars—I blame "Hank" Morris, "Hungry Hank"—I blame Hungry Hank Morris more than I do any one of the Chanlers in this game. He played the role of the Devil. He seduced the Chanlers and taught them how to sin.

Q. What relation, if any, is Henry Lewis Morris to your brothers and sisters?

A. He is a connection by marriage; he is a near relative of the late Lewis Morris Rutherfurd, Sr., the astronomer, who is the Chanlers' uncle; he married their father's sister, Miss Margaret Chanler, now deceased.

Q. I am at a loss to understand, therefore, Mr. Chaloner, why a pecuniary interest in your estate should have impelled Henry Lewis Morris to have you put into a lunatic asylum, as he could not in any way share your fortune, receive any benefit from your estate?

A. Correct, Judge; but you have not differentiated between the motives which impelled Morris and the motives which Morris used with the Chanlers. Morris was impelled by a motive of spite, of personal pride and self-protection. He was impelled to do this by self-protection. This horrible, stinking scandal hung over the head of his blood relative, a world-wide renowned astronomer, the scandal hanging over Lewis Morris Rutherfurd was hanging over the head *ipso facto* of Henry Lewis Morris. That was his motive supported by spite towards me. He, on the other hand, craftily inculcated a *greed of gain* in the *Chanler* family; *he did* not cultivate *spite* in *them*, and *he was not* actuated by *greed* himself; *because* he could not *satisfy greed*—he could never touch the money—but he was actuated by spite and self-protection, and the Chanlers were actuated by greed, which he fostered and nourished, and, in fact, implanted in their hearts.

Q. Your brothers and sisters, I gather from what you said in your previous depositions are people of strongly magnetic personal characteristics, of decided ability and a firm will, are they not?

A. They are. I can say there is no love lost between us, but that they are the most brilliant I have ever met. I have met families which were as brilliant as regards two or three of the members thereof, but here you have got an average of seven, counting me out, because I no longer wish to be reckoned as a member of the Chanler family—there are seven men

and women and they are unequaled, and this among all nationalities.

Q. Is Mr. Henry Lewis Morris a man of strong personal will power?

A. He is more "obstinate" than strong. He is obstinate, and like all misers, because that is what he is at heart, he is plodding, and patient, and tireless on the trail of the dollar.

Q. As I understand, Mr. Carey's dislike to you originated in Paris, '86 or '87; your commitment to "Bloomingdale" did not take place, I believe, until '97. Do you really think, Mr. Chaloner, that Mr. Carey during all this long period of time was nourishing such hatred for you as to impel him to this horrible act against a sane man, as you term it?

A. I am forced, Judge, most reluctantly to conclude so on the evidence.

Q. Mr. Stanford White and you had been warm personal friends, had you not, until the difficulty you detail occurred at Monticello, at page 284 of the deposition?

A. He was my dearest friend.

Q. You think, Mr. Chaloner, that it was in consequence of that difficulty that Mr. White united in the conspiracy to have you confined in a mad house and persecute you from that time on, according to your statement?

A. I am forced on the facts to so conclude, Judge.

NOTES DUE PLAINTIFF BY UNITED INDUSTRIAL CO., 563-568.

Q. Your brothers and sisters were actuated mainly from pecuniary motives, one brother in addition to personal reasons to delay payment on a note for $40,000 which you had given the company in which he was interested to the extent of $50,000, and all of these brothers and sisters, with the exception of one sister, on account of your failure to invite them to your wedding?

A. You are absolutely correct.

Q. Mr. Carey's dislike to you originated in Paris, '86 or '87, did it not?

A. Correct.

Q. Now, Mr. Chaloner, as a lawyer, are you not aware that payment on the $40,000 note instead of being delayed by your commitment to a lunatic asylum would have been precipitated?

A. But it was not, Judge; that note has never been paid yet; I never got a dollar of that $40,000 note, and in spite of that Mr. Winthrop Astor Chanler has the gall, infamous mendacity, to accuse me of being "broke," accused me of being "broke" in his 1905 deposition de bene esse, to say I was "broke" when I was put in "Bloomingdale;" although he and others of the Chanlers owed me $40,000; of course, a portion of that they did not owe me, because the whole note was given by the United Industrial Company, of which I was a large stockholder, controlling stockholder, but they owed their pro rata share of $40,000 due me for what the company owed me, for that whole $40,000 the whole company was responsible; they were responsible for the whole of that $40,000 note, the company was; and if I *had* been "broke," all I would have had to do would be to allow that note, long past due, to go to protest; whereupon the Chanlers, who knew the value of this property, would have made good for the full $40,000, *although they would have had to pay me*, if I had chosen to force their hand; and in spite of that, Mr. Winthrop Astor Chanler is a liar, to say under oath, in the 1905 deposition that I was "broke" when I was owed $40,000 by a $200,000 concern which he admits is worth $100,000; and they juggled that note, sir, when I was laid up for life, immured forever in a dungeon; because they set to work, if you please, and changed that note into a second mortgage on the property, changed its very nature from a note, from live capital, into a mortgage, and it stands on the record; there is the note owned by me against the United Industrial Company, it has been metamorphosed into a *second* mortgage, if you please, Judge, not even a first mortgage. That is a fact, on the record.

Q. Now, was not this first mortgage on record at the time the note for $40,000 was given you?

A. No. This first mortgage was another note which the same company gave me, another little note of $30,000 of which I owned half, namely, fifteen; and this note was turned into a first mortgage, a wonderful, magical, metamorphosing of notes. The business men on the jury will recognize that here were two legitimate ordinary business notes which were turned by hocus pocus, presto-change, into relatively first and second mortgages on the property. In other words, a negotiable instrument got to be a non-negotiable instrument, a completely revolutionary, and absolutely, in its essence, illegal situation when it was done, without the consent or *even knowledge* of the holder of the notes! I did not know anything about it. I woke up one day after I got out of "Bloomingdale," woke up one day to find that my notes had been metamorphosed into mortgages. This first note—that is, not the first note, but really the second note, because by another amusing attitude of this metamorphosis, the second note becomes a first mortgage, or rather the first note becomes a second mortgage, and the second note becomes a first mortgage. It verily "is to laugh." The first note was a $40,000 note, the second note—when I say first and second, I mean, of course, in priority of time, in their chronological order—the first note was a $40,000 note, there or thereabouts, which was money I lent the United Industrial Company; the second note was for $30,000, half of which I loaned the United Industrial Company and half of which Winthrop Astor Chanler loaned it, namely, to buy a large amount of cotton.

Q. These notes, then I understand, were notes given by the United Industrial Company to you for $40,000 and to you and Mr. Winthrop Astor Chanler for $30,000?

A. There or thereabouts.

Q. Well, yes.

A. Yes. There may be ten thousand dollars difference, but it is there or thereabouts.

Q. They were absolutely unsecured?

A. Absolutely.

Q. And now these notes are secured by a mortgage upon the property. Now, Mr. Chaloner, is not security of a mort-

gage upon a corporation vastly superior to an unsecured negotiable note?

A. Judge, I salute you as a lawyer of great acumen and ability. That is a very beautiful riposte and your remark would be absolutely apropos and unanswerable were it not that the parties were millionaires.

Q. Were the notes then signed by millionaires or the company?

A. By the Company, but the millionaires' honors were involved and they were not in any way, shape or manner dependent for their support or maintenance on the income from the company; it was merely an investment on their part among various other investments, and they would no more think of jeopardizing their business reputation or personal honor as regards these notes than they would think of putting their hands in the fire voluntarily. They would rather have the United Industrial Company sink into the ground, and burn up like the Equitable building, and the ground sink to the bottom of the earth, and lose the whole $100,000 than have a fly-speck against their personal integrity, because they could not afford it.

Q. As I understand it, however, Mr. Chaloner, there was no legal liability whatever upon any of you gentlemen in regard to these notes, these notes being made absolutely by the United Industrial Company, a corporation, and therefore I repeat my question which, from your answer, I know you thoroughly understand. Is not in the eye of the law the security of these notes better to-day than it ever was?

A. No—well, the security in one way is better, but it would cost more money to get those notes paid now than it would before. In other words, it would require legal action, foreclosure of mortgage, to get these notes paid, whereas in the ordinary nature of a note they would simply have to be presented to the bank for protest, and now lawyers have got to be paid.

Q. Again, the mere fact of protesting these notes would not have allowed you to enforce them against the company, and would you not have had to employ lawyers to bring suit

upon these notes to enforce them, just as you would have to employ lawyers to foreclose the mortgage?

A. No, for the reason I have given, that the Chanlers were so rich and prominent they could not afford for one moment to have any note that they were even most remotely indirectly interested in go to protest.

PHOTOGRAPHS OF PLAINTIFF SHOWING CHANGE OF PHYSIOGNOMY, 697-702.

Q. At first you only resembled Napoleon dead when you went into this trance-state?

A. Yes.

Q. Has there since occurred, in your judgment, a marked likeness between yourself and Napoleon Bonaparte?

A. According to the photographs and according to the testimony of the New York "Tribune" aforesaid, and Waldon Fawcett, aforesaid, yes.

Q. The trance-state likeness, then, as I understand it, has become permanent and you have actually grown to resemble Napoleon. How do you explain this?

A. I don't attempt to explain it.

Q. You just knew it to be a fact?

A. Yes.

Q. Now, Mr. Chaloner, is it not a fact that there is nothing more misleading than photography, and that you can make a photograph show almost anything you wish by the proper adjustment of the camera and the subject of the camera?

A. No, that is not so when honest photography is being done, and the plate is not touched.

Q. You, therefore, think that these photographs, of which you have produced a large number, indicate clearly that the trance-state, or something of the sort, has actually produced in your own countenance and in your own head and skull the likeness to Napoleon?

A. Not on your life, Judge; I don't charge that to the trance at all; I simply point to the photographs I had taken in 1904 and since, particularly in September, 1911, and compare those photographs with photographs of mine taken pre-

vious thereto, running from the time that I was about twenty-six to date, and I note the changes in those honestly taken photographs—not taken with a view to working a likeness, or anything of the sort, but simply untouched—when I say untouched, I mean the plates, and I mean in essential features—I see that in some of the printings of some of the photographs—eye-brows have been touched—those can be removed, those touches by a damp cloth in the presence of the Court and jury without interfering with the photograph at all; the assistant of Homeier & Clark innocently, but contrary to my wish, did touch up the eye-brows; there was no occasion for that—I have plenty of eye-brow—but this lady thought it would improve the eye-brow by putting a fine penciling on it—that is visible in some of the photographs—when I say *some*, I don't mean that any of the photographs show a full line of the same photographs touched up—some of those photographs that have been touched are untouched; by which I mean, that the printings from the untouched negative are sometimes touched and sometimes not touched—sometimes the eye-brow has been touched and sometimes it has not. I am careful about this so that if they should discover—the other side—that there has been an eye-brow or both eye-brows slightly penciled—*I don't mean eye-lashes, I mean eye-brows*—there won't be any misunderstanding about it. This touch can be removed, as Mr. Homeier explained to me, by a damp cloth without interfering with the photograph in the slightest degree, with simply a little India ink or what not, penciling for an eye-brow—that can be removed—it has nothing to do with the photographs.

Q. Have you ever heard of a similar case to yours in this change in your likeness to Napoleon Bonaparte?

A. Not at my time of life. I have, of course, known of people and seen people that did resemble Napoleon, and on one of my photographs exhibited, one a cut of one of my photographs published in the New York "Globe" I have written in blue pencil "Oct. 10, 1911, I win! "The Oyster opener." By that I meant that that cut of me resembles strongly an oyster opener at John Sutherland's restaurant in Liberty Street

(New York) some twenty odd years ago. He was known as "The Oyster Opener who looks like Napoleon," and men used to go to that restaurant to see this oyster opener; he resembled Napoleon more than any man I have ever seen, with the exception of one French actor who was acting in Madam Sans Gene—as I remember it, that was the play—yes, Madam Sans Gene—this was in London in 1889 I saw this play. That man certainly did resemble Napoleon, even more than the oyster opener at John Sutherland's restaurant, particularly did he resemble him more than the oyster opener as regards intellectuality—this man had far more intellect in his face—very naturally—than did the honest and skillful oyster opener—but this oyster opener was the living image of Napoleon divorced from intellect—the features were extraordinarily alike—and when I saw this cut of me in the "Globe" I exclaimed on my Birthday, October 10th, "I win! The Oyster opener." I know that I must look like Napoleon Bonaparte, or at all events this cut of me did, because this cut was strikingly like the face of the oyster opener at *John Sutherland's;* and it occurred to me that Napoleon Bonaparte was something of an oyster-opener himself, on the principle of Shakespeare's phrase "the world's mine oyster which I with sword will open;" and Napoleon Bonaparte opened more oysters, as regards world conquests, than any modern conquerer.

Q. I speak, however, Mr. Chaloner, not of likeness, original likeness to Napoleon, but the change which was produced in yourself?

A. I don't know personally of any other instance; I don't say for a moment that other instances have not occurred, but I don't know of any actually taking place as late in life, well past thirty, as in my case; I don't happen to know any.

Q. Mr. Chaloner, do you not know that, as a physical fact, it is not possible to have actual structural changes in the bone formations of the skull and face?

A. I know that it has not been generally supposed, but science advances, and nobody can tell what can be done in a trance. Dr. Thomas Jay Hudson has shown in his said "Law

of Psychic Phenomena" that the X-Faculty, or Sub-consciousness, has undoubtedly control over physical processes in the body, such as producing lack of sensation to pain, etc., shown in hypnotism, the lack of sensation to pain; and what the X-Faculty or Sub-Consciousness can do with the human frame is *absolutely unknown to science.*

Q. In your judgment, therefore, there has been this actual structural change.

A. *Judging from the photograph, yes. Of course, I am subject to correction if the photographs don't show it; but people to whom I have shown the photographs have agreed with me that they do show structural change. The reporter for the United Press, who saw these photographs at the beginning of this deposition, stated to his chiefs when he sent his wires in for publication, that my forehead, for instance, was more retreating before this change took place than it is now and that now it rises almost sheer;* and that is an instance of others besides myself being guided by these photographs, and concluding that these photographs did show a structural change. *It cuts no ice whether there has been a structural change or not; it is not a thing that I am backing up, or anything of that sort; it is a matter of absolute indifference, it is simply my observation, that is all.*

PLAINTIFF'S BIBLE STUDIES, 641-644.

A. I understood you to say, Mr. Chaloner, you became convinced whilst in "Bloomingdale" from the reading of the Bible that your commitment there was worked out by Divine Providence in order that you might reform the lunacy laws of the world; am I correct in that?

A. That puts the matter somewhat strongly. I stated that as an hypothesis—hypothesis—by which I mean that after ferreting out every possible combination as to how a just God—provided there is such a Being—could tolerate the foul injustice of allowing me to squander the best years of my life in the hell of a mad-house cell—while I was trying to ferret out that, it occurred to me that possibly—I wish

this understood purely as a guess on my part—absolute guess—to attempt to square myself with the Supreme Being—if there is a Supreme Being—it is not anything I believed—a desperate gambling guess made by a man in a cell for years, in a cell with plenty of time on his hands, time "to burn," plenty of time for thought—I made a guess that perhaps if there is an omnipotent Supreme Being, and if He works through human agency, that *perhaps*—perhaps—peradventure He *may* have selected me—as He selected everybody—to be used as the humble instrument for the working out of the destinies of the world—He *may* have selected me as a lawyer, as a man with a very long memory and a very sensitive disposition, and as a man who was interested in other people besides himself, and took a very lively interest, not only in this country, but in the world; on the principle that He liked to see right triumph and despised to see wrong triumph; that on that wild, by which I mean the gambling guess—hypothesis—perhaps—peradventure—the Supreme Being, if He existed, had made my life a hell for some purpose. I remembered that the Supreme Being is said to have said in the Scriptures, words to this effect, "I don't willingly afflict or grieve the children of men." If that was true, which I believed—I believed the Scriptures as I believed my precious mother who first introduced me to that noble Book—if the Almighty said that, it was up to the Almighty to "make good," and explain how it was that He was grieving me so; *why He was giving me such hell*, to speak frankly, and the only way as a lawyer and logician I could work out this problem was so to hypothesize the case that *perhaps—peradventure*—I was *unfortunate* enough, so far as this world is concerned at least, to have been selected as a tool by the Almighty for reforming bogus lunacy legislation. That was simply a desperate guess made by a man who had time on his hands, and time to guess; and also by a man who believed the Scriptures and had a high respect for his ideals of God, of a Supreme Being, and who did not believe a Supreme Being could act in an inferior way to his (my) *ideals. I didn't think that I could conjure up the ideal of God, which was superior to*

the reality of an ideal God, and I knew that if I were a God—for the sake of argument I state that—that I would be ashamed to work such a "con-game" on a law-abiding citizen—such I was—as had been worked on me by chance or Providence or God, as one happens to look at the conundrum; unless my hypothesis, my guess, was correct; *that the Almighty was working me to death because the situation was desperate, and needed a man to be worked to death, almost, to right it.* That was simply a guess, a desperate guess (I flag the Docs) in protest against their saying that I thought "I am Heaven sent," or selected by the Almighty, or any such poppycock and damnable rot and mendacity as that. I didn't think anything of the sort. When I had my back against the bars of a cell in "Bloomingdale" I just threw that out as a guess in order to "save the face" among other reasons, of my ideal of a just God.

Q. You have written two volumes, I believe, Mr. Chaloner? One called "Four Years Behind the Bars"—

A. "Four Years Behind the Bars of Bloomingdale."

Q. Yes, and "The Lunacy Law of the World;" which book was first published?

A. "Four Years Behind the Bars of Bloomingdale."

PLAINTIFF'S NAME IN BOOK OF REVELATIONS, "APOLLYON"—"NAPOLEON," 666.

I mention this to show the close alliance of this Sub-Consciousness with somnambulism. On this occasion when I used this speaking-trance *I said that my name was mentioned in the Book of Revelations*, or words to that effect—it has been fully gone into on direct, *exhaustively* if not *exhaustingly*, and I explained what my X-Faculty meant by that, namely, *that this was a play on words.* I was accused by my X-Faculty of being the reincarnation of Napoleon Bonaparte; and the name in the Book of Revelations it referred to was "Apollyon; now Napoleon can be made out of a combination of the *Hebrew* word which *means* Apollyon, namely, Abaddon, and the *Greek word* Apollyon, which means *Destroyer.* Join the

final letter of the word Abaddon with the first letter of the word *Apollyon* and you get "Napollyon"—which is pretty close to Napoleon.

PLAINTIFF'S HABITS AS TO SLEEP, 706-707.

Q. What are your habits as to sleep, Mr. Chaloner?

A. I require a vast amount of sleep; I require from nine to ten hours sleep; I can do without sleep on occasion, if necssary, and I can sleep at will. For instance, I had to take a very early train, for me, to come here to-day to begin this deposition at 10 o'clock, as I was prepared to do; I arrived here at 9 o'clock; I had some work to do last night; the consequence was that I did not take my clothes off; I didn't undress, for I didn't have the time; and I had about half an hour's sleep last night; which does not interfere with my deposing to-day with ease, but the night previous I had had ten hours of solid sleep. I can, therefore, take on board sleep as a camel can take on board water. When a camel has to make a journey of some days without water, over the Sahara, it takes on board a lot of water, and I by analogy (I flag the Docs) take on board a lot of sleep, from ten to twelve hours, sometimes even more, before I have to cross a desert of work of, say, twenty-four hours work without closing an eye for more than twenty-four hours or so. Nobody knows the necessity of sleep more than myself, *and I go on record and say that sleep is more necessary than food; that it is safer* for a man to cut down on his food and eat too little than to sleep too little; it shortens life and leads to nervous breakdown, and the world does not know—physicians *do*—the average man in the street does not know—*the absolutely basic importance of sleep;* it is more necessary to get sleep than it is to get bread, other things being equal. Of course, if a man does not get food at all he would starve to death; on the other hand, if he does not get sleep at all, he is liable to go crazy.

Q. What hours since you left "Bloomingdale" do you choose for your work?

A. The same hours that I had in "Bloomingdale," about

ten P. M. to 3 A. M., next morning—I sometimes lap over to four or five—and rise never before 12, noon, and generally 2 P. M., which allows me, as you will see, Judge, a most generous leeway for sleep.

Q. I understand, then, that you have practically turned, in your case, the night into day?

A. Precisely, Judge, and those are the precise words of Dr. Lyon when he came into my cell early in '97 when he said, "*I see you turn night into day*," words to that identical effect.

PSYCHOLOGICAL EXPERIMENTS OF PLAINTIFF, 663-671, 676-679, 679-689, 691-698, 707-711.

Q. On page 297 of the 1908 deposition you stated that you were drawn down a bit too fine from working rather long hours. May I ask what work you were engaged in at that time that so fined you down—drew you down?

A. I was following out psychological investigations in Advanced-Experimental Psychology, aforesaid.

Q. How long had you been a student of Psychology and making experiments in it before 1897?

A. From 1893. I studied the same in 1883 at Columbia University, or 1882, but I began to make original investigations only in 1893 in a journal and kept them up consecutively from that day to this.

Q. Did you ever mention those experiments to any one prior to your commitment?

A. I certainly did, but not to many people. I mentioned them to Dr. James Morris Page, aforesaid, and for the reason among others, that he came over to see me when I was carrying them on regarding the investigation of the doctrine of chances, regarding the fall of numbers from the roulette wheel.

Q. Among other psychological experiments, therefore, you were devoting yourself to the question of numbers from the roulette wheel. Would you call that strictly a scientific investigation?

A. I would, most certainly, having in view the fact that the scientific investigation I had made in the fall of numbers, from the stock ticker, in Wall Street, in the shape of eights, had been accurately prognosticated by my X-Faculty; in a three days' campaign in Wall Street, three days previous to Christmas eve, 1896, I had made $600 in those three days; the X-Faculty suggested or made the statement to me that it could with equal accuracy prognosticate the fall of numbers from the roulette wheel. I was investigating that statement upon the part of the X-Faculty, and that was all there was to it.

Q. When did you first become aware of the possession of this X-Faculty?

A. When it wrote "get a planchette," which was done late in December, 1896, as I was noting the break of the pool balls at pyramid pool on my standard championship Brunswick-Balke-Collender billiard and pool table at the Merry Mills.

Q. The first time, therefore, that the X-Faculty spoke to you, to use that term, was late in 1896; am I correct?

A. Yes. This was done by writing, by automatic writing; my right hand wrote "get a planchette" without my volition, and, to my great surprise. As fully explained on direct, I was making breaks with pool balls to note the formation of the break, which represented a map of the heavens—suggested a map of the heavens—and held my pencil in my hand; when my hand wrote, "get a planchette."

Q. You then between that time and the time of your commitment in '97 began to have frequent conversations, if I may so use the term, with your X-Faculty?

A. Yes. Professor William James calls them "internal communications;" he calls them so in his opinion on file in the 1901 proceedings at Charlottesville, Nov. 6th, when I was declared sane and competent.

Q. The X-Faculty made itself known t oyou by premonitions before taking up conversation with you; is that right?

A. Yes, but I didn't know it was an X-Faculty; I didn't

know it was my Subliminal-Consciousness; I opined that it was something like it; I had been studying premonitions from 1893.

Q. Does that Sub-Consciousness or X-Faculty still continue its work with you?

A. Yes.

Q. I believe that I understood from your examination in chief that this X-Faculty was really the author of all your works; am I correct in that?

A. It is as regards the style of the works and the alignment, the mapping-out, the scheme of composition, the chapters, etc.; I am master of all the matter therein; I have to master all the matter put commonly in any book; I start the writing and then the X-Faculty supplies the style.

Q. Are you conscious of the X-Faculty being at work, of its commencement, continuation and cessation?

A. Perfectly.

Q. The manifestation has no particular nervous effect upon you, has it?

A. Not the slightest.

Q. It does not give any warning of its coming?

A. Not the least.

Q. Or any warning of its departure?

A. Not the least.

Q. You are simply John Armstrong Chaloner in one moment and then another "John Armstrong Chaloner, X-Faculty?

A. Correct.

Q. You are unable to draw the line between these two except by the fact that you know one is at work and the other is not?

A. I am readily enabled to draw the line between the two because what the X-Faculty writes is not what I think; I don't ratiocinate—I don't think out a solitary word when I am in a "writing trance," when the X-Faculty is exercising graphic automatism in me; all that is done by the X-Faculty, which does its own thinking—I am thinking on entirely different lines—I am observing and criticising the words as they

fall from my pencil, or my pen as the case may be—whether I am using a pencil or pen—or I may be thinking of a game of poker, or what not; but the writing of the X-Faculty is absolutely independent of my own cerebration, of my own conscious cerebration.

Q. The X-Faculty, then, might almost be—I use the word in default of a better word—a spirit absolutely distinguished from yourself?

A. Yes.

Q. I understood you to say that the pamphlet which you filed relating to the X-Faculty, called "The Pythagorean Triangle of Psychology," was really written by your X-Faculty?

A. Yes, with the above reservation; I originated all the thought, all the matter, but the style is that of the X-Faculty, and when I say I originated all the thought, I want to qualify that; I originated the body of the thought.

Q. What new system of psychology do you claim has been presented by this X-Faculty pamphlet? Is it a new discovery of the science of thought, or is it more ethical than psychological?

A. It is a new discovery in the science of thought. To support that statement I simply point to the fact that it is unique. This book is the only book that has ever been printed —this pamphlet—which is the product of pure graphic automatism, automatic writing on a scientific subject in which logic rules, and reasoning holds sway, absolutely distinct from anything touching spiritism or spiritualism, in the sense of spiritism—nothing to do with the spirits of the dead, or any discussion on that subject—*this is simply a scientific, and also a philosophic, document on the internal processes of every human mind above that of an idiot, no matter what the education;* that this is an investigation of the faculties with which every human being is endowed; it is startling for the reason that it is the first time that a medium, which I am, according to Professor William James' said opinion—I hasten to say that I am endowed spiritualistically—Professor James admits that in the same opinion—he says I am "of a strongly mediumistic or psychic temperament," by

which I mean, I have the temperament of the medium without the medium's convictions or ideas regarding interplay of spirits from the other world.

Q. Why do you select the choice synonym of "The Pythagorean Triangle of Psychology" as a basis for your pamphlet?

A. It occurred to me on the stand. This is an example of my philosophical theory, this is a mathematical example of it, it occurred to me on the witness stand in the 1908 deposition, it occurred to me there, but never had occurred to me before, and I carried out the idea as it occurred to me, well aware of the danger of what I was doing, of developing a new philosophical theory on the witness stand—I was well aware of the risk—I had as a reserve the determination to make a clean breast of it provided I did not succeed, in working my way out of the woods, simply to say on the stand that my interest as a philosophical student had outweighed my caution as a lawyer, and that in my zeal for science I had followed this trail which had presented itself to me on the stand for the first time—that was my reserve; I was not forced to call up this reserve because I emerged victorious from the jungle of philosophical experiment with this theory, this philosophical hypothesis which I rough-hewed on the stand and later worked up—this year worked up, briefly, very briefly, some dozen pages only—into the said pamphlet on "The X-Faculty, or The Pythagorean Triangle of Psychology." Why this Pythagorean Triangle presented itself to me, I know not; I never thought of it before in that connection or any other connection, except the connection of having conquered it in the study of geometry. It did present itself, and I followed it up, and it is now the basis of my philosophical system.

You, therefore, believe that in this Pythagorean Triangle of Psychology pamphlet you have established a new philosophical system?

A. Well, practically. There have been reachings up towards this system, but nothing approaching it in this—"so-to-speak"—science of the clouds, has ever done, that I have ever heard of.

Q. In other words, none of the great thinkers of all the ages, from Aristotle down, have ever had their minds turned in the same peculiar direction to which yours was directed; and therefore you have the right to claim that you have originated a science of thought which never occurred to them?

A. That is the result of my philosophical study at Columbia University and since; I have found no system at all analagous to my own, except that of Jesus Christ. I shrink from mentioning that, but, as I am on the stand, I would have to retreat, turn tail, in fact, lie, if I did not state who has given a system which suggested mine and that was Jesus Christ. To my mind He was the greatest psychologist that ever lived. Of course, being a communicant of the Episcopal Church, I believe He was the Son of God. I am now speaking of Him as a man for the sake of argument; and while He inhabited flesh as a man, subject to like temptations—that was to develop a system of psychology which I have found, after a lifetime of nearly fifty years, to be the only one that fills the bill, according to my experience—not according to my desires—far from it—but according to my experience—to my great surprise I find—and that is what encourages me to speak thus now—

* * * * * * *

Q. Do you consider, therefore, the X-Faculty pamphlet a valuable contribution to scientific Psychology?

A. Considering its origin, I consider it highly valuable—considering the fact that it was written by the X-Faculty itself; it is unique in value as a Psychological document.

Q. May I inquire, Mr. Chaloner, what practical benefit to the science of psychology this pamphlet is?

A. It endorses absolutely, and from a purely Psychological viewpoint, the accuracy of Professor Flournoy's phrase, "The diabolic theory" as applied to the Roman Catholic Church. The Roman Catholic Church confines this diabolic theory to the theological viewpoint naturally—it is sacred—*I have made it a purely scientific avenue of investigation entirely devoid of religion, although it is founded on the originator of the Christian religion, namely, Jesus Christ.* It is the system of Jesus Christ as applied to science. Jesus Christ

gave His system as a Religious System, not as a Psychological one. I have found that it is the créme de la créme of Advanced-Experimental-Psychology, pure and simple.

Q. Do you propose continuing your investigations in the line indicated by the X-Faculty pamphlet, or do you consider the matter closed by that pamphlet, as far as you are concerned?

A. I consider it barely begun by the said pamphlet.

Q. You have been ever since '96, and still are, up to this date, an earnest student of Psychology?

A. I am.

Q. And you now consider yourself one of the authors of a system of Psychology which you hope to work out to its full completion at some later date?

A. I do on the evidence.

Q. Do you think it possible that you can work out this exceedingly abstruse system of Psychology and have time to devote yourself to your life work of purging the Lunacy Laws of the world? Is not the task one too great for an ordinary mind?

A. No, Judge, for this reason: That the work regarding the purging of the Lunacy Laws is limited to the winter and to every other year, alternate years, as regards the States of the United States; the Legislatures of most of the States only meeting every other year—I believe I am right in saying most of the States. As regards Europe, the same thing holds true; because the amount of business that a Premier maps out for one year might not allow the bringing of a new bill, an extra bill like that of the reformation of the Lunacy Laws, in that year's program. My idea would be to put that to the Premier of, say England, a year before; and let him think it over and see what I say is correct regarding the horrible state of English Lunacy Legislation, the illegal state of it, totally contrary to Magna Charta, and then let him bring that forward the next year, this bill. Of course, it would not be my bill, it would be a bill brought forward by a member of, say, the House of Lords or the House of Commons. I would not appear in it at all. I

would not want to "queer" my bill any by lugging myself in, God knows. In fact, as soon as I am in position to, a good idea would be to carry on this thing impersonally, I mean through my publication, "The Lunacy Law of the World"; and write the various Governors of the various States letting them know the situation and what they propose to do—find out what they propose to do—and the same way in Europe—get letters of introduction to Premiers, which I can, and in that way keep myself in the background, because I do not wish to prejudice my work by my own personality; I have got a great many enemies and will have a great many more before I am through with this little game, in all probability, and I want to keep as much in the background as I can. *What I am out for is results;* and, as I have said, that will only take a few months in the year and can be done by correspondence. If, of course, Judiciary Committees of the various legislatures wish me to appear before them and argue the case, I should be only too happy to do so. Thus, I shall have plenty of time to carry on my Psychological investigations.

Q. You have made, Mr. Chaloner, in addition to your X-Faculty studies, practical Psychological experiments, have you not?

A. What do you mean exactly by that, may I ask, Judge?

Q. Well, in carrying live coals in your hand. That, as I understand, from your examination, was a practical Psychological experiment?

A. That was *Quasi-Psychological;* it was largely, if not ninety per cent., with a view to testing the scope of the theory known as Conservation of Energy; I wished to find out whether that rule applied to things mental as it is known to apply to things material, and whether the self-control which I had exercised, over three calendar years previous to the experiment with fire, *three times a day*—I used to eat meals three times a day—*three times* in putting the "knife to my throat," or words to that effect (I flag the Docs); I mean by that, dominating my appetite, and exercising power-

ful self-denial, in avoiding food which did not agree with me, or which I did not assimilate; I wished to know whether the study, and toil, and irritation, and most diabolical torment that I was put to three times a day for three years, if that was lost in the economy of my mentality, or whether it was stored up in the recesses of my brain somewhere; and I knew that this experiment with fire would operate as an exact test of the Conservation of Energy one way or the other; if I carried the coals according to the rules I laid down I would have increased enormously in my powers of self-control, because I am exceedingly sensitive to pain; I did carry the coals strictly according to the rules laid down; namely, not to drop a coal, not to utter a sound, not to go off a square heel-and-toe-walk and discharge the coals from my hand, at the end of a fifteen foot trip, out of the window. I did all this, and *this proved to me absolutely that the law of the Conservation of Energy is universal, and applies to things mental as well as to things material;* and also explains how martyrs of the early Christian Church could stand the torments of the Roman arena in being burned alive without a sound; I don't mean to deprive those martyrs of the glory of having received celestial aid, Divine aid; but I say they could have done it without that aid, because, *being martyrs*, they were people who had, presumably, *conquered themselves*, and to do that they had to go through the same process as I did to conquer *myself*, and they would have gotten the same control I did, and I conquered fire by having conquered myself—"*Q. E. D.*"

Q. Do you think the pain caused by that experiment justified it, or, to use an old French phrase with which you are so familiar, was the game worth the candle?

A. Yes, it certainly was, because this is a great truth that I have discovered. There was no mention of it in science; I am the first person who has discovered that the law of Conservation of Energy is universal, and applies to things mental as well as to things material; and that anybody who wishes to fortify themselves against the ills of this world, so that they will be as superior to pain as the Apache

tied to the stake, all they have got to do is to follow the dictates of their conscience, and physique, and avoid what their physique tells them that they should not eat, and do it right straight along, and that will make them superior to any pain that can be put to them.

Q. Could not the same end have been gained with much less pain, and much less trouble, by simply continuing your self-denial in the matter of food?

A. I could not have tested the amount of reserve force of self-control, which is generated by the daily damnable humdrum, dull self-domination, in avoiding what you ought not to do. I could not have tested that by any less drastic means than I took; because I am very sensitive to pain; as I have stated on direct, I required chloroform to have my ring finger set from an accident in the hunting-field; I had a compound fracture of the ring finger of my right hand; my horse fell with me and broke it, and I could not have that set without chloroform; that was in '93, when I was on meat; shortly after that, about that time,, I went on vegetables—for the reason that I could not take meat without getting gout, and discovered that vegetables was the way out, and that almost effeminate sensitiveness to pain which I showed in February, if that was the month, certainly it was in the winter of '93—and that almost effeminate, certainly very unmanly sensitiveness to pain, shows that I had a pretty big job in front of me to be able to carry fire in my hand—*it was a metamorphosis almost, a changing of the nature almost*, or that part of the nature; *it* was a *tremendous proposition;* and if I could do that, why, it would prove beyond cavil that this humdrum treatment, the carrying out of the behests of religious people and philosophers, of doing what your nature tells you to do, your conscience and physique, is followed by golden reward—golden is used relatively—I don't mean in spot cash—but in increased power over pain and over yourself to an extraordinary extent—I used that relatively (I flag the Docs). I consider it almost extraordinary for a man who had to have chloroform for having a little fracture of the finger set, for that man to carry three

handfuls of live coals in his hand—I think that is almost extreme. I am not patting myself on the back, I hasten to say; *I am patting the experiment on the back;* I am defending this experiment, and for all time wish to set at rest this question, and endorse my discovery; that the law of the Conservation of Energy is universal, and that anybody can stand pain—rise superior to the woes of this world, and ills of life, if they will control themselves daily.

Q. Is it not a fact that this is merely a repetition of the old law that practice makes perfect?

A. No, Judge, because practice has got nothing on earth to do—the practice of following out your conscience and following out the behests of your physique regarding the avoiding of food that your physique will not assimilate—that has got nothing to do with the accumulation of will power, so great as to amount to a force which can dominate fire, or pain by fire. The side which you mention, "practice makes perfect," is the moral side. I dwell on the physical, scientific side, of the burning of flesh by fire; and following out this moral law which you have well stated in your phrase, "practice makes perfect," this moral law carries in its hand a scientific gift, namely, of storing up so much self-control that a person becomes superior to all pain by being able to dominate pain which before dominated him. I *wished to* dominate a small pain when I fractured my finger, and *had* to call in the aid of chloroform; three years later, in '96, I *dominated* a much severer pain, that of fire, a far severer pain than the manipulation of a fracture, pain in dominating agony brought about by three handfuls of live coals carried consecutively in the same hand.

Q. Did you ever repeat the experiment?

A. Never in the world; and further than that, I made up my mind then and forever never to undergo pain again under any circumstances, because that was a lesson with me, for I had dominated and conquered pain, and I bid it goodbye.

* * * * * * * * *

Q. You had also been making an investigation, I be-

lieve, Mr. Chaloner, during your Psychological studies on the question of trances?

A. Yes.

Q. When did you first begin to practice this trance state?

A. At the Hotel Kensington, before Stanford White and Dr. Eugene Fuller, in February, February 13, 1897, shortly thereafter, a few days thereafter.

Q. How did you come to know about the trance condition?

A. My X-Faculty gave me to understand by internal-communication, aforesaid, that if I would take a mirror, a shaving mirror, and hold it in front of me, my arms extended, I reclining on a bed in my room, that I would, through this initiation, enter a trance or trance-like state, in which, after I closed my eyes, my features would resemble those of Napoleon Bonaparte after death. I didn't have any belief in this prognostication, but I mentioned it *en passant* to Stanford White and Dr. Fuller and they expressed a desire to see if the X-Faculty would materialize, would make good, would change my features, so that I would resemble Napoleon. When I say change my features, I mean, of course, those features which are moveable; such as the mouth and that portion of the skin of the face which is moveable, the cheeks. I entered that trance, as fully described and as vouched for later on at "Bloomingdale" by Drs. Flint and MacDonald, with marked success. My features did resemble Napoleon Bonaparte, as aforesaid, *which was a great performance on the part of the X-Faculty, because outside of a trance I did not resemble Napoleon Bonaparte by any manner of means, as my photographs* before I escaped from "Bloomingdale" show. NOBODY HAD EVER SAID I RESEMBLED NAPOLEON BONAPARTE; it was only in the photographs I had taken in 1904 that the resemblance began to appear—I say, *began*—because it was very slight; it was noticed by the New York "Tribune" in an article put in evidence in the direct, also later in 1908—in November, 1908—Waldon Fawcett, as has been said on the direct, stated

in an article which he wrote for the Richmond "Times-Dispatch" said that I *strongly* resembled Napoleon Bonaparte, or as I remember it more accurately, he said, in effect, anyone seeing me was struck—anyone seeing John Armstrong Chaloner was struck with his likeness—full face—to Napoleon.

Q. Will you state by what process your X-Faculty first made known to you the possibility of your going into a trance?

A. By what has been called by Professor James, "Internal-Communication."

Q. As I understand it, then, the first trance you ever went into was in the Hotel Kensington in February '97 before Stanford White and Dr. Fuller?

A. Correct.

Q. Will you explain by what process you hypnotized yourself for this trance?

A. I held this mirror, which had a metal, a narrow metal frame, above my head, not so far back of my range of vision but that I could see my eyes; that brought into play two processes of hypnotization. One is the rolling back into the head of the eyes. The second is looking at a bright object, like a polished piece of metal in a high light. This brought on a species of auto-hypnotization—it was only a species of it, because I retained my consciousness absolutely—I did not hypnotize myself, I only *partially* did.

Q. Did you mention to either White or Dr. Fuller the fact that your X-Faculty had told you about your trance state?

A. I did.

Q. In what terms did you tell them about it?

A. I said it "informed" me, or words to that effect; I didn't use the words "internal-communication," as I remember it, since that is the phrase of Professor William James in his opinion given October, 1901, and if I am correct in this, I could not, of course, have used that same phrase in '97, since it was Professor James'.

Q. By what terms did you then describe your X-Faculty to these gentlemen?

A. I used the term "Sub-Consciousness," or some such equivalent term. This is indicated by the term I used, which is quoted of me by Dr. MacDonald in his affidavit or on the stand—in one or both of those instances—in which I used the phrase "Anti-Hypnotic Sub-Conscious-Suggestion"; I did not have the term X-Faculty then; I had not, so to speak, discovered that phrase, or originated that term; the term is original with me—the term X-Faculty—for that reason I used a more cumbersome term in explaining it to Dr. MacDonald and used the above, "Anti-Hypnotic Sub-Conscious-Suggestion," which explains what the X-Faculty did; and also brings in what was in operation, namely, the "Sub-Conscious Suggestion."

Q. Did you ever go into this trance-state with a resemblance of Napoleon Bonaparte for Dr. Starr?

A. No.

* * * * * * * *

Q. You have spoken repeatedly of your "Sub-Consciousness." Did you ever use that term to Mr. White or Dr. Fuller?

A. I could not take my oath to that, because this was at the very outset of my investigations in trances, and I had not had as much time to form phrases as I did between then and the visits of Drs. Flint and MacDonald later in Bloomingdale."

Q. Then at the time of Dr. Starr's visits at the Hotel Kensington in February and March '97, you were practically ignorant of the Modern Experimental Psychology, as you have developed it since?

A. Almost so, not entirely, because I had read Thomas Jay Hudson's "The Law of Psychic Phenomena" in 1895 or 1896, there or thereabouts, one of those two years; I had that book and that goes into that. That was all I knew of

Advanced-Experimental Psychology and compared with what I knew afterwards I was practically ignorant of it.

Q. In other words, from the time of your incarceration, your commitment to "Bloomingdale," up to the present you have steadily pursued the study of Experimental Psychology?

A. I have without cessation.

Q. Did you know that Dr. Starr was a Psychologist?

A. He claimed to be—he claimed to be—by which I mean he claimed to be interested in trances. He did not use the word, as I remember it, that he was a "Psychologist," but he claimed to be interested in trances and to know something about them.

Q. At one point in the early deposition you stated that you left off the study of Psychology on account of a lack of sufficient discovery. Can you tell us now what discovery you lacked at that time?

A. That was a breaking of my chain of thought on the stand. It should continue to this effect: My discovery of what a hole it got me into. When I first got into "Bloomingdale" I was very much disgusted with Psyschology for having gotten me in such a hole, and for the first weeks I was there, I quit Psychology. That should be borne in mind in connection with my recent statement that I studied it from the time I was in "Bloomingdale"—I followed it up—with that exception, of the first few weeks I was in "Bloomingdale"—I did follow it up steadily. That explains the break in my testimony about the discovery. That was the discovery.

Q. What was the discovery; I am not exactly clear; I don't think you make it clear in your answer?

A. It was the discovery that Psychology got me into a hole by leading me in "Bloomingdale."

Q. And for that reason you left off the study?

A. For several weeks, yes, until I found that I could not write a letter which satisfied me; then I employed Psychology to write the letter for me; I employed automatic-writing, and, from that day to this, I have never, so to speak,

fallen out with my X-Faculty; I *did* fall out with it the first few weeks, but after it wrote me this letter, the letter to Micajah Woods, it convinced me that it had a better prose style than I had, beyond the shadow of a doubt. That letter has been universally praised as a concise, well-written, choicely-worded brief, and from that day to this I have employed the X-Faculty for prose writing. In poetry and Sonnets I do my own writing, but in prose and in romance, such as this romance at the time of *Machiavelli*, which the X-Faculty began at "Bloomingdale" in the three-act—I say three-act—I don't know that it had written as many as three, as I have said—and this play written for the stage, as I have said, by the X-Faculty—in every form of prose the X-Faculty does my writing for me, by which I mean I employ graphic-automatic writing when I have any writing to do, outside of the Sonnets.

Q. Has your X-Faculty been of any assistance to you during this examination?

A. When I have had any writing to do.

Q. The X-Faculty then has been treated by you as an actual entity, having existence with which you could quarrel or argue or agree; is that correct?

A. No, Judge; it has been treated as a Faculty which had all the mental equipment, and independence of conscious cerebration, which an individual might have; but I always maintained, and maintain now, that it is a part of my mental make-up and of everybody else's mental make-up.

Q. You stated a while ago that you quarreled with this X-Faculty, or that it quarreled with you. Will you kindly explain what you mean by that?

A. The same way that a man quarrels with his conscience.

Q. You practiced automatic speech to Dr. Starr, I believe, at some time or other?

A. I did.

Q. Where?

A. At the Hotel Kensington in February, from the 13th of February to the 13th of March, those are the dates

that I arrived at and left the Hotel Kensington; on his visits there on one or two occasions I practiced it at his request.

Q. What exhibitions of the automatic speech, so to use the word, did you give Dr. Starr?

A. The one referred to on the direct, in which I stated in effect that—of course I was in a trance when I said this—it was not I speaking, it was my X-Faculty—when I say it was not I, I mean it was not my conscious self, it was my Sub-Conscious self which had erupted, so to speak—that is the technical Psychological term for it—which did the talking, this X-Faculty which does the walking in sleep-walking, or somnambulism. *Apopos* of that, I used to be a somnambulist when I was a child. I once got out of bed, when I was a child about six years old, or possibly eight, walked down stairs and opened two doors, and went into the servant's hall and showed my good taste by sitting next to the prettiest nurse girl in the house; I woke up in my night gown sitting along side of this nurse girl at the advanced age of six or eight or seven, and she woke me up, or rather hers' and the other servants' laughter woke me up, greatly to my surprise. That was the longest walk I ever took. That left me shortly afterwards. I never did any walking like that in my sleep after ten years of age, as I remember it. I mention this to show the alliance of this Sub-Consciousness with somnambulism. On this occasion when I used this speaking-trance *I said that my name was mentioned in the Book of Revelations*, or words to that effect—it has been fully gone into on direct, *exhaustively*, if not *exhaustingly;* and I explained what my X-Faculty meant by that, namely; *that this was a play on words.* I was accused by my X-Faculty of being the re-incarnation of Napoleon Bonaparte; and the name in the Book of Revelations it referred to was Apollyon: now *Napoleon* can be made out of a combination of the *Hebrew* word which means Apollyon, namely, Abaddon, and the *Greek word* Apollyon which means *Destroyer.* Join the final letter of the word *Abaddon* with the first letter of the

word *Apollyon* and you get "*Napollyon*,"—which is pretty close to *Napoleon*.

Q. You have taken up some time, Mr. Chaloner, and labor in explaining the Napoleonic trance. How many of those trances did you have in all?

A. One before Stanford White and Dr. Fuller, one before Augustus St. Gaudens, alone, one before James Lindsay Gordon, alone. All those were in the Hotel Kensington between the dates 13th of February and 13th of March, 1897, and one before Drs. Flint and MacDonald in "Bloomingdale."

Q. Then the first time you ever saw yourself in the Napoleonic trance was when you went into it for Mr. White and Dr. Fuller?

A. Yes; I didn't see myself, of course, my eyes being closed; I representing the death of Napoleon in that trance—of course the eyes are closed—when I say *of course* I mean they are closed after death by the attendants who drew the eyelids down over the eyeballs.

Q. At first you only resembled Napoleon dead when you went into this trance-state?

A. Yes.

Q. Has there since occurred, in your judgment, a marked likeness between yourself and Napoleon Bonaparte?

A. According to the photographs and according to the testimony of the New York "Tribune" aforesaid, and Waldon Fawcett, aforesaid, yes.

Q. The trance-state likeness then, as I understand it, has become permanent and you have actually grown to resemble Napoleon. How do you explain this?

A. I don't attempt to explain it.

Q. You just know it to be a fact?

A. That is all.

* * * * * * * * *

Q. The work, however, which you have done since you came out of "Bloomingdale," with the exception of poetry, has been, so I understand, by your X-Faculty?

A. The writing of it, yes, the style of it; the collection of the facts and the learning of the subjects has been done by Yours Truly.

Q. Do you find that the X-Faculty is affected by loss of sleep as you are individually?

A. Practically, yes, but the X-Faculty can do better work when I am very sleepy than I can myself; by which I mean that if I am making notes or writing anything, and am very sleepy, my handwriting won't be as good as though the X-Faculty were doing it in a writing-trance, by which I mean, graphic-automatism, or automatic-writing.

Q. Your natural talent, however, is not for writing, but for oratory, do you not think?

A. By all manner of means, yes.

Q. Do you not think that your decidedly marked talent, next to oratorical talent is towards psychology and science?

A. Not exclusively; I am more drawn towards poetry, towards Sonnets, than I am towards any other form of literary composition—that satisfies me more; Psychology decidedly is the prosaic side of life to me, is the more or less humdrum side compared to poetry—I don't mean to say that Psychology is humdrum by any means, or Science—but it does not appeal to me as does Poetry.

Q. You are satisfied then that your great genius lies in the Sonnet?

A. I don't allow those words to apply to me without my consent.

Q. Well, we speak here not with any idea of false modesty, because I am very well aware that you would not have any false modesty about the matter, but I gather from your examination in chief that you think, or thought, your great talent lay in the direction of the Sonnet. Am I not right about it?

A. Well, I don't use the words "great talent" either, I mean that what I do myself irrespective of the X-Faculty, irrespective, I mean of automatic-work is the work in the Sonnets; that is what I do and that is *me;* all my prose writing has the stamp of the X-Faculty, by which I mean, that

it is all automatic work. I have explained on the direct that I now get my literary "inspiration" (I flag the Docs), by which I mean the flow of ideas; I get that now as all the rest do, and for reasons given on the direct; and the X-Faculty gives me my ideas, or gives its ideas, pours them right into my consciousness—they appear to me to be my own ideas, but I know very well they are not my ideas—the manner is not the manner I would use—it is more literary—I am not literary—emphatically not—none of my writing before I discovered my X-Faculty is literary—there is not a touch of the literary touch in it; on the other hand, since I discovered my X-Faculty, critics—newspaper critics, etc.—have said that my work was literary, had a decided literary flavor—I am speaking of my prose work—and that was the work of my X-Faculty. This "inspiration" (I flag the Docs) that I get is what every literary man gets when he is in what is called "the vein" to write—that is, when you feel in the vein to write your X-Faculty is pouring ideas into your consciousness. Unless you originate those ideas yourself, so to speak, hew them out, beat them out, hammer them out—the ideas which occur to you are differentiated from those which you work out yourself, those are the gifts—the "inspiration"—of your X-Faculty, sir.

Q. Your X-Faculty then wrote the romance which you claim is superior to the "Three Musketeers"—wrote the play—wrote your "Four Years Behind the Bars," and wrote, "Chaloner on Lunacy?"

A. Correct, except that I do not say it is superior to the "Three Musketeers," except in style, but I do maintain that—which is not saying much, because Dumas was no stylist—he was a very careless writer—his style was about the worst of any writer, with the possible exception of Balzac. I think you will agree with me on that, Judge Duke. When I say Balzac was no stylist, I do not mean that he was not a most powerful and inspired writer, but I mean his sentences were not balanced and polished in the sense that Victor Hugo's were, or that Flaubert's were.

Q. Mr. Chaloner, I understand in answering the last question that whilst you were in "Bloomingdale" you registered a Hannibal oath in 1897 on the margin of Stormonth's Unabridged Dictionary that you would devote yourself to the cleaning of the Augean stable of the Lunacy Laws of the world. Please state what efforts since your escape from "Bloomingdale" you have made in that direction?

A. I have delayed my case from 1902 to date for that purpose. I did not wish to delay it, but in order to follow out that purpose it was necessary to delay it, as events have proved, until to-day. I wrote my own brief, so strongly against my will as to be described by the word "disgust;" because Senator Daniel positively refused to include in his brief a sufficiently broad foundation to cleanse the Augean stable of Lunacy Legislation of the world; he refused to put in my two claims to the necessity of trial by jury before a male or female citizen can be deprived of his or her liberty for an indefinite period. Second, he refused to put in the claim—my claim—that trials *in absentia* are *ipso facto* illegal. A man cannot be deprived of his liberty without those two safeguards aforesaid, trial by jury and he must be in the presence of the jury and of the court; cannot be tried twenty-five miles away from court; cannot be condemned while he was in his cell, condemned in "Bloomingdale." On a charge of murder, rape, burglary, incendiarism or incest, a citizen, male or female, is given the above safeguards; they are given a jury trial and they are tried in the *presence* of their peers, the said jury; whereas, on a charge of lunacy, the poor devil of a citizen does not have "a run for his money;" he is condemned without a jury trial, as I was in the '97 proceedings, and after I had been languishing for two years in a cell without jury trial the farcical Sheriff's Jury was brought on the stage which tried me in *my absence—in absentia*—which the law would refuse to tolerate were the liberty of a rapist, a murderer, a burglar, incendiary, or a man guilty of incest at stake. And more than that, I have written my book, "The

Lunacy Law of the World," and spent all the money that was required to have the Lunacy Laws of the six great powers of Europe imported and, with the exception of Great Britain, translated in English. The six great powers were, Great Britain, France, Italy, Germany, Austro-Hungary and Russia. I am as familiar with those laws, or was when I wrote the said book, as I am with the laws of this country regarding lunacy; and when I criticize the laws of the United States I also criticize the laws of the world, as above comprehended. That was utterly unnecessary as regards obtaining my property. I did that for the purpose with which I had registered the said Hannibal oath, to purge the world of the infamies which now masquerade in the name of Law, in the realm of Lunacy Legislation. I also founded my Quarterly newspaper entitled "The Confederacy and Solid South," for the purpose of fighting my cause aforesaid, the reformation of these laws, and noting in my columns what States fell into line when approached by me to reform their iniquitous laws and what States refused to fall in line. I therefore spent hundreds of dollars in the publication of these *three* things: The brief and argument-in-writing of Chaloner vs. Sherman, some thirteen hundred pages of standard law-book size; in printing "Chaloner on Lunacy," or "The Lunacy Law of the World," some four hundred pages, more or less, of the same size, and "The Confederacy and Solid South," a twelve page newspaper of six columns on a page, liable to be increased to twenty-four pages. This is what I have sacrificed; this is what I have done, not to mention the years of poverty, of disgrace, which I have spent while I had the stigma of incompetency and insanity on my professional brow—I am an acknowledged law-writer —said stigma having been placed on me March 13, 1897.

Q. Mr. Chaloner, you have, therefore, made a careful examination, not only of the lunacy laws of this country, but of the world; have you found in that examination a single one of the lunacy laws of the world which you would not amend, if you could?

A. With the exception of five States of the United

States, there is not a single nation in the world which has not got faulty laws. I make no exception.

Q. Could you give me the names of the five States?

A. Quoting from memory: Michigan, Mississippi, Texas, Colorado, and I am not sure, but think the next is Washington. They are in my book, "The Lunacy Law of the World;" and of course, as I have explained, once I put a thing on record I remove it from my line of attack in memory, so I am not certain about the last one; I am certain of the other four, practically certain.

Q. Your idea is, then, that you would, if it is left to you, devote your energies, time and money to individually have corrected the Lunacy Laws of the world, including Russia, Italy, Austria, France, Germany, England and all the States of the Union, except five?

A. You are perfectly correct, Judge.

Q. Your criticism, then, of the Lunacy Laws prepared by the law making powers of those countries, with the exception of five of the States of the Union, shows a fatal ignorance on the part of the law makers, or an absolute disregard of the right of humanity where people are charged with lunacy?

A. That is so; I am sorry to say that is unequivocally so; there is no doubt about that; that they treat alleged murderers, rapists, incendiaries, burglars, and parties guilty of incest, with a thousand times more consideration than they do alleged lunatics.

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ROANOKE RAPIDS POWER CO., PLAINTIFF'S CONNECTION WITH, 644-653.

Q. I believe you stated at page 420 of your deposition that you wrote and published "Four Years Behind the Bars of Bloomingdale" to protect a portion of your property in North Carolina represented by stock in the Roanoke Rapids

Power Company, from a raid at the hands of Winthrop Chanler and William M. Habliston; is that correct?

A. Yes.

Q. You state that these gentlemen attempted to freeze you out of your fat holdings in the Roanoke Rapids Power Company, and that this plot was foiled, and the publicity which you turned on the dark antics of Messrs. Habliston and Chanler frightened these gentry to such an extent that you saved every share of your stock, and the members of the Chanler family guaranteed new stock in the new paper mill; and the object of the book was to stop this raid, as I understand it; is that correct? Your book achieved its object and this plot was nipped in the bud?

A. Yes.

Q. Mr. Chaloner, I will make you a statement which necessarily must be somewhat lengthy, and, therefore, I apologize to you and the Court for the length of it, and would like an answer when I finish reading the statement. Are not the facts in this case in regard to this stock, as follows: It was originally $100 par value and afterwards reduced to $10 par value?

A. Correct.

Q. It has never paid any dividends, has it?

A. Never.

Q. Its water power is supposed to be very valuable?

A. It is.

Q. Some years ago Mr. Habliston, the other Chanlers and other people interested in this company, organized a new company called the Roanoke Rapids Paper Manufacturing Company to which the Roanoke Rapids Power Company leased or sold some property and water rights, the idea being that this would help the Roanoke Rapids Power Company, certainly to the extent of the rent received for the water power used. Now, did you not hear of this project and become quite excited and believe that it was some scheme to affect your interest in the Power Company and to freeze you out of a profitable transaction, and did you not notify Mr.

Sherman in some way that he must not allow your rights in the stock of this new company to be lost in any way?

A. Yes, Judge, only it was not a hypothesis on my part; I did not "think;" I knew that my stock would be cut in two unless I was allowed to subscribe to this new mill. I didn't have a dollar; Sherman had all my money; I wanted Sherman to subscribe, but he would not. The plot was worked up by Hablistor and Chanler, it was very clever. It was this: Everybody who owned stock in the Roanoke Rapids Power Company were required to take pro rata fifty per cent. of their amount of stock in this new mill; if they didn't do that they were to forfeit fifty per cent. of their stock by giving it up, surrendering it, at ten cents on the dollar to the Roanoke Rapids Power Company. In other words, it was a plain, bald freeze-out. I was the largest stockholder of the Roanoke Rapids Power Company; I had at par value $375,000 worth of stock out of an original capitalization of $2,000,000; I was by all odds the most powerful stockholder of the R. R. P. Co. This excited the cupidity of Messrs. Winthrop Astor Chanler and Habliston; they saw me lying helpless, the richest man in the R. R. P. Co. stock, and they saw I could be robbed of half of my stock if they engineered a freeze-out. Why? How? Thus: They knew I didn't have a dollar; they could make this rule which would require an output on my part of $17,500, there or thereabouts, to save my stock. That was as far out of my reach as it is out of the reach of a tramp, under the circumstances, Sherman having all my money; I would then be robbed of half my stock by these iniquitous proceedings which are tolerated by law, and they would become richer to the tune of over $175,000 worth of stock at par. They had no idea in their iniquity that I could defend myself; that I could strike a blow which would spike their guns, so they boldly set to work to rob me. I *did* spike their guns by writing "Four Years Behind the Bars," and I began that book with "Stop Thief!" I hereby raised a hue and cry of "Stop Thief!" explaining the whole thing—the book was written for the purpose of protecting my stock from this raid of Habliston and Chanler, and it threw such a fright—threw such a

scare into these gentlemen, that all of the stockholders, or at least Mr. Winthrop Astor Chanler, among the Chanler family stockholders in the R. R. P. Co., came forward and begged Sherman to put up the said $17,500, there or thereabouts, for my pro rata share in the new paper mill. Sherman refused, unless my said stock was guaranteed from loss, thereby rendering a double commission for Sherman, in other words. So terrified was Mr. Winthrop Astor Chanler that he actually acceded to this; and I now own stock which is equal to Government bonds, United States Government bonds, or Bank of England notes; it is guaranteed from all loss by millionaires. That is the situation.

Q. Is it not a fact, Mr. Chaloner, that Mr. Sherman declined to invest in this stock unless the Chanler family, not only Mr. Winthrop Astor Chanler, guaranteed him and you against any loss arising from subscription to the stock?

A. That may be. I want to be conservative, as I always am in statements, so I simply included Winthrop Astor Chanler, and I am quite sure *he* guaranteed the stock—it also may include the whole family—but I don't know that, not having access to the papers—it may have, very readily.

Q. Now, when I state this fact to you that your several brothers and sisters actually executed and delivered to Mr. Sherman a written instrument under their hands and seals agreeing to indemify and save said Sherman from loss as Committee of Mr. Chaloner's Person and his estate—when I tell you this was actually done by them and the investment was made on the strength of that guarantee, do you still insist that this guarantee was given by Mr. Winthrop Chanler on the ground of his fright at your publication of "Four Years Behind the Bars?"

A. I certainly do, and I hasten to substantiate my said claim. The first thing that put me onto this steal was a very oracular, a very Delphic, a very cryptic, a very obscure statement by Mr. Winthrop Astor Chanler on the stand in the '99 proceedings before the Sheriff's Jury; that statement was, in effect, that he was so satisfied with the Roanoke Rapids Power Company that he proposed to increase his holdings therein,

words to that effect. I was amazed at this when I read it on getting out of "Bloomingdale," because I knew that this stock was so valuable, that it was not on the market, you could not get it for love nor money, and I at once began to inquire as to whence and how Mr. Winthrop Chanler could increase his holdings. After cudgeling my brain a little while I began to be alive to the unpleasant possibility that I was the victim, that I was going to be the source of increase in Mr. Chanler's wealth regarding his holdings in the Roanoke Rapids Power Company—that I was the only person that could be held up and robbed—so I watched out and had a spy—(I flag the Docs)— to inform me of what was going on in Roanoke Rapids, and in that way I got hold of the very first news regarding this proposed new paper mill and how it was to be juggled. All the other stockholders were able to take stock in this paper mill with two exceptions—with three exceptions—one was Major Thomas L. Emry, since dead, who was land poor; he owned thousands of acres of splendid cotton land in North Carolina, and was not overburdened with ready cash on that account; he sold some of his holdings in order to go under the yoke of this freeze-out; he was frozen out of a certain portion of his stock, as I remember it; I am very certain of that from what he told me before he died; he sold some of his stock to Henry Lewis Morris, if I remember rightly, who was also in this steal, on the evidence; for at the time of this steal and thereafter Henry Lewis Morris becomes a stockholder of power, by which I mean, he has considerable stock in the Roanoke Rapids Power Company, and when I was outside of "Bloomingdale" Henry Lewis Morris didn't own one share of stock. The other victims of the freeze-out were the small stockholders, men owning twenty-five shares, there or thereabouts, men in Petersburg and Richmond, clerks and men of that sort—not many of them—not more than a dozen, I should say, all told—friends or alleged friends of William M. Habliston. And I was not able to meet the freeze-out. The small stockholders were all frozen out, every one of them gave up their stock; they didn't squeal about it, they didn't make futile noises; they received ten cents on the dollar and let it

go at that. Major Emry didn't like what he had to do, but he could not help it; he met the freeze-out by having to sell thousands of dollars of his stock, if I remember rightly, to Henry Lewis Morris; at all events, Henry Lewis Morris is the possessor of several thousand dollars worth of stock in the Roanoke Rapids Power Company, and I was threatened with the same robbery. I asked Mrs. Elizabeth Chanler Chapman to prevent this scandal—that is fully explained in "Four Years Behind the Bars"—and some correspondence went on between me and that lady between third parties—I didn't write to her—in which she made the fine bluff to help me—in which she sent her fine reforming husband, John Jay Chapman—John Jay Chapman writes articles about reform, and is very active in reform movements, and all sorts of things of a reform nature—she sent her reforming husband down South to meet me at the Jefferson Hotel—all fully explained in "Four Years Behind the Bars"—this sending down of John Jay Chapman was merely a spying expedition on the part of Mrs. Elizabeth Chanler Chapman, on a par with her cold-blooded, unsisterly, unwomanly spying of me when she came to "Bloomingdale" in June, 1897, and informed me that the bars of my cell were placed there to keep me from running away. She simply used this as a fake dodge to enable her husband, Chapman, to spy on me in Richmond as she had spied on me at White Plains, New York, where "Bloomingdale" is located. Chapman had a conference with me from ten till one—ten A. M. to 1 P. M.—at the Jefferson Hotel, and he didn't show his hand until I had been talking for about three hours, and then he did, and said he would advise his wife *not* to carry out my request, *not* to lend me the money. She is a millionairess and has money to burn, and I proposed to her that she subscribe the stock, that I wanted, to save my holdings—subscribe the $17,500, there or thereabouts, amount of stock in the new paper mill, holding it in her name for me until I get my property, and I would guarantee the stock from loss by taking it back as soon as I got my property, and if I did not—if I never

got it—I put that in by way of form—I may *not* have put that in, but I *might* have—she had stock which everybody was tumbling over everybody else to get hold of—this valuable close corporation—Roanoke Rapids Power Company stock of water power, and land, and cotton manufacturing, by which I mean it is in the cotton belt, a most choice and select manufacturing city, none superior in the United States any where—that is to say, its future is—it is only "a beginning" now—it is a thriving manufacturing town—but it is bound to be a city in time and before a very great while—Mrs. Chapman flirted with this proposition and gave me to understand that it was not distasteful to her; at all events it was so far from being distasteful that she was willing to send her husband all the way down from New York to Richmond to talk to me about it. After he had pumped me for three hours he then turned on me and told me that he was going to advise his wife not to do what he had come there to do, namely, invest for me. I received this politely and suavely and let it go at that. I then wrote to Mrs. Elizabeth Chanler Chapman and warned her that if she did not make good I would show up the Chanler family for what they were, in the book which I then proposed to write. They thought it was a cry of "wolf" and laughed at it—she ignored it—ignored my letter. I thereupon wrote "Four Years Behind the Bars," and that *did* scare them to such an extent that my stock was saved and I own not only my $375,000 worth of par of R. R. P. Co. stock, but I own $17,500 worth of stock in the new paper mill.

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Pages 648 to 652 omitted.

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SHERMAN, THOS. T., PLAINTIFF'S CONNECTION WITH, 451-459, 459-466, 714-716, 795-797, 802-804.

Q. Who is T. T. Sherman, your present Committee? Is he not a lawyer and gentleman of high standing, so taken and accepted by everyone in New York who knows him or of him?

A. I do not know that.

Q. You have spoken of Mr. Sherman as a "crook," a "cad," and "pretty thoroughly dishonest"; upon what facts do you base this serious accusation?

A. Upon his various affidavits that I am an incompetent person now. He swore once or more since the decision of the Virginia court aforesaid, November 6, 1901, he has sworn that I am now incompetent by reason of insanity, words to that effect, and by saying that he has sworn falsely and by doing that he has perjured himself, on the evidence. He has in his possession a transcript of the Virginia trial of November 6, 1901; that has been charged under the item known as John B. Moon; the Honorable John B. Moon, of counsel for the other side now in this proceeding, presented a bill for some fifteen dollars, ten dollars or fifteen dollars, years ago, which was paid by Sherman in exchange for a transcript of the proceedings of November 6, 1901; that item appears—I have not seen it for about five or six or eight years, along there, but, as I remember it, that was the amount, ten dollars or fifteen dollars—that appears in his schedule of my property rendered up and sworn to by Thomas T. Sherman annually, and in this specific schedule—I have forgotten the year because it is immaterial—he acknowledges he has got himself furnished with a transcript of the Virginia proceedings which proves beyond cavil that I know where I am at, and he lies when he says I am insane and incompetent, or incompetent through insanity, whatever juggling of words he chooses which eases his conscience, which he possesses, which permits him to keep a citizen as insane, as on the Virginia record I am not, and a record which is endorsed by the paper I just put in evidence here to-day, the opinion of the learned United States Circuit Court of Appeals in granting me an appeal from the decision of Judge Hough, who refused me a safe conduct in New York; Judge Hough was reversed by said learned court and I was granted a safe conduct. In granting said safe conduct the said Learned Circuit Court, United States Circuit Court of Appeals, said, as I have said to-day, in effect, "the Virginia decision cannot be ignored." Sherman knows all about that. He fought this proceeding, he did his level pitiful best to prevent me getting that decision, to prevent me getting the safe conduct to New York so that he might keep on pilfering my estate, as he has

torily that no agreement was to be entered into which would interfere with my laying a foundation for a suit for damages against "Bloomingdale" and everybody connected with the case, with the single exception of the person or persons bringing this suit for the restitution of my property. Judge Roger A. Pryor was then retained and had been retained or was retained at that time shortly after this meeting—that is immaterial when he was retained, but it was on or about that time—but the material point is, Judge Roger A. Pryor brought forward the legal news that a recent decision in New York, of the New York Supreme Court, held that nobody but the alleged incompetent could institute proceedings for the superceding of the committee and the restitution of his property. Thereupon the whole proceedings fell through on the strength of Judge Roger A. Pryor's learned discussion of the law, and nothing further was done.

Q. This was in 1902 that Mr. Sherman made this offer, Mr. Sherman and your brothers made this offer to your counsel, as I understand it?

A. Yes.

Q. Was not Mr. Sherman appointed an officer of the court under heavy bonds as your Committee at that time?

A. His bonds were obsolutely picayunish, they were absolutely ridiculous regarding the size of the property, some little tuppenny thing like $50,000, and probably had on his saying at that time that my property was only worth a quarter of a million—an absurd bond, ridiculous bond, an incentive to theft, *certainly to a New York lawyer.*

Q. Can you tell me Mr. Chaloner, what more Mr. Sherman could do than the offer which he made if you would apply to the court which appointed him for the restitution of your property and vacating the Committeeship?

A. In reply to that, I repeat what I said a few minutes ago, that nobody but a shyster who received permission to pilfer my estate would rob a sane man under the cloak of the same man being a lunatic.

Q. I don't think you have answered my question; probably you have misunderstood it. Could Mr. Sherman as an

officer of the court, turn over the property placed in his custody by the court to you, without an order from the court appointing him?

A. Of course not.

Q. Then what more could he do, Mr. Chaloner, than to offer that if you were to apply to the State Court for such an order he would at once turn your property over to you?

A. He could play the part, not of a New York lawyer, but an honest man, and refuse to have anything more to do with the nasty, stinking business aforesaid.

Q. Then if Mr. Sherman declined to have anything more to do with it do you think that your brothers, whom you say are after getting your property away from you, would have agreed to a man to handle and care for your property who was a crook and dishonest?

A. If they could find a shyster that was low enough to take it, otherwise not.

Q. Was not Mr. Sherman appointed to this place of trust and confidence by the Supreme Court of New York—

A. He was.

Q. Now, one moment! I have not finished yet. And would that Court appoint a "crook," a "cad" and "a pretty thoroughly dishonest man" to a position in which the care of a large property was concerned?

A. Don't ask me that, Judge.

Q. That is a perfectly legitimate question?

A. That is my answer.

Q. I must insist, Mr. Chaloner, on an answer to the question?

A. I reply, I don't know.

Q. Do you think that your brothers, who you say are after getting your property away from you would have agreed to a man to handle and care for your property who was a crook and dishonest?

A. Certainly they would if they had a watch on him.

Q. You think, therefore, your brothers would have agreed to the appointment of a crook and dishonest man to take care of your property, which you say consists of a mil-

lion and a half dollars, with a $50,000 bond, and with no other watch upon him than being there in the same city with him?

A. At that time the property was not a million and a half; at that time the property had not been increased by the accession of the Laura Astor Delano large legacy of three-quarters of a million, or what not—I don't know the exact amount, but very large it was—that much ran my property up to a million and a half. I don't say that Sherman admits it is one million and a half, and I don't say that it is worth that now under the hammer, but I am speaking of that with my North Carolina property in view and the value that has potentially with the increase of valuation in North Carolina and manufacturing there in the cotton industry. It is not worth a million and a half to-day, it won't bring that in to-day—five per cent. on a million and a half—but I won't take a million and a half for it. After this explanation I say that the Chanlers certainly would; they can hire—they took such good care regarding specifying every parcel and scrap of property I had in the 1899 proceedings, and the bulk of my property is in real estate, and what is not in real estate is in railroad securities which can be, if they are not already, registered and therefore cannot be stolen, and the sphere of stealings of Thomas T. Sherman is circumscribed, no matter how big it is; Sherman is tied, he cannot do more than a certain amount of stealing in New York, according to the position of my estate; as big a thief as he is at heart I believe—as big a rascal as he is on the record—Sherman cannot steal, carry off in his pocket, No. 298 Broadway, for it weighs too much; that is brick and mortar in the shape of a ten-story building, and as big a thief as he is he cannot steal an elevator, and therefore it does not require any very careful detective work to so anchor on my property, in fact, it is so anchored, that simply by watching the avenues of permanent pilfering Sherman will be kept down within the lines; the Chanlers don't want him to steal—he can rob me to the tune of a double-headed commission in every day of the year, and he can do that all

right, but that the Chanlers recognize as the price they must pay for the crack they propose to get at my property when I die.

Q. You have stated, Mr. Chaloner, that Mr. Sherman has taken every occasion to thwart and irritate you. Will you kindly give specific instances to justify the charge?

A. With pleasure. One of the first and nastiest was a letter, which was addressed to me care of Thomas T. Sherman, in New York, and by gad, he was cad enough to open that letter—this was months after I was declared sane, and competent by the Virginia Courts—opened that letter and was brazen-faced enough to put his signature "T. T. S." on the envelope, and no man who has got the faintest inkling of gentility or what the meaning of the word should be could be guilty of such a blackguardly act as that; and that monstrous fact is enough to base everything I have said about Sherman being a cad at heart, upon. He sent me that letter having thus opened it and raped its contents by stealing them as he had been stealing my dollars through his bogus commission—I mean illegal commission, because it is unjustified in right, whatever it may be in New York law—and he goes and irritates me by sending me this letter, as proved, and he spits on the Virginia decree—the decree of the court of the State of Virginia—spits on that and treats me as though I was drooling at the mouth and an incompetent lunatic, and sends me on the letter which he has broken open and in connection with which he has broken the Constitution of the United States—in opening this letter he has broken the Constitution of the United States—in this way he has broken it—that the Constitution of the United States specifically states, words to this effect, that the citizen shall be safe in the privacy of his private papers, in the possession of his private papers and free from unwarranted search. Here was a case of unwarranted search if ever there was, here was the unwisdom of the Supreme Court appointing Sherman as Committee. Here was a private note for all I know it was from a lady—
—I have not got the note here—I am sure I have it at Merry

Mills, as sure as I can be of anything in this world in that line—it was so small a thing as compared to the 180 odd exhibits I have introduced, that letter has escaped me pro tem.—I did not have the strength to corral that letter and go through dozens of documents which I have at Merry Mills to hunt that up, and therefore cannot produce it; I say this (I flag the Docs) that no man since George Washington has got a more proven, rock-ribbed reputation for veracity than has the plaintiff in Chaloner versus Sherman. I don't say this to pat myself on the back; I say this to lend strength to the truth of the statement that I have been unable after a diligent search to discover this letter which was opened by Sherman; and the number of exhibits which I have brought in this case, 180 odd, which will be carried into this court in a large suit case and in a steamer trunk, will show that I have hastened to send to the court proofs of my veracity. That being the case I am now willing to point with pride to my proved veracity, and I challenge in all history the record of any gentleman, bar George Washington, who can prove that he is as truthful as I am, by which I mean, who can concentrate so many exhibits of veracity on any one legal proceedings as I have in this case, having lugged in 180 odd to support my naked word. Therefore, I want to have it understood that I am not saying that I am the most truthful man in the world by any manner of means, and I don't say that I am any more truthful than any other truthful man, not one whit, but I do maintain and say with conviction, that I do not know of a single case of any body who can prove that he told the truth on so many checked-off and noted, in legal proceeding instances, as has the plaintiff in this case; I have made one hundred and fifty-nine statements any one of which might have been lies, if I had been a liar, and every one of them was proved true by the 159 exhibits entering on their heels. That is why I say no man since George Washington has a greater reputation for veracity, by which I mean so thoroughly well-founded and verified in a court of law.

Q. Mr. Chaloner, as I understand, the letter which you

claim Mr. Sherman opened, was forwarded to you with his initials marked upon it?

A. Yes.

Q. Do you not think, Mr. Chaloner, in the large mail which in an office like that of Mr. Sherman receives that this letter might have been opened by mistake?

A. In that event if Mr. Sherman has the slightest inkling of what is due from one gentleman to another he would have given me some sort of an apology for his having been guilty of his gross breach of etiquette.

Q. Would not the fact that he wrote his initials on the letter and forwardng it to you be sufficient to show you that he had opened it by mistake and regretted it, and that he wished you to note that fact by writing his initials on it?

A. I interpreted that as a sort of "I glory in my shame" upon the part of Sherman.

Q. Has not Mr. Sherman paid for the taking of your deposition in this case, all of your depositions in this case?

A. Yes.

Q. Has he not made you a regular allowance and from time to time increased it, paying you now $17,000 per annum?

A. Yes.

* * * * * * * * *

Q. I understand you to say, Mr. Chaloner, in your previous deposition that Mr. Sherman through a fictitious suit had robbed you of $20,000. Will you please tell us where that suit was instituted and what was its nature?

A. It was instituted in the New York Supreme Court and was in the nature of paying un-named fees to the late Prescott Hall Butler—They don't state the amount—and also un-named to Sherman and his counsel, and also un-named to the Referee of the suit, and also un-named to my guardian *ad litem*, Judge Hiram R. Steele.

Q. In this suit which—is this the suit which Mr. Sherman filed for the settlement of his accounts as Committee in the Supreme Court?

A. Well, I don't know if that was the title of it. He filed an annual schedule with the Supreme Court regarding my income and property and how it had been expended, and I didn't know that he had any accounts to settle, except when he made this, as I say, tremendous "strike" against my property, which swept away $20,000 of accumulated income.

Q. Did you not get a copy of the summons and complaint in this case?

A. Oh, yes, I think I did; I am quite sure I did.

Q. You didn't appear in that action and have your interests represented?

A. No, I could not safely, without raising the question of comity between the Federal Courts and the State Courts; I did not wish to jeopardize my case in the Federal Court by going into the State Courts under any pretext whatever—New York State Courts—for that reason, for fear of raising the question of comity which you, of course, as a lawyer, will thoroughly understand.

Q. Did you not know that this action was binding as a proceeding *in rem* against all your property and protected Mr. Sherman from any attack upon his action?

A. Presumably, yes, on the evidence.

* * * * * * * * *

I got no allowance until 1903; I got a very small one, I got $6,000 in 1903; everything of course was relative; $6,000 is not a small sum, of course, but it is for a millionaire; and I got only $6,000 for several years and that pinched me like anything.

Q. In this benighted part of the vineyard is not $5,000 far above the average income of any man, professional or otherwise?

A. Yes, it is a good income anywhere, but I state that I had a much larger income, and having that it seemed very small to me; I had an income eight or nine times larger.

Q. Who first paid you the $6,000?

A. Thomas T. Sherman.

Q. Is it not a fact that Mr. Sherman sent you checks for your allowance and you refused to receive them; is that correct?

A. "I got there all the same"—I got the money for the checks; I did not send him the receipts myself; I endorsed the checks though; I did not send him the receipts myself, no; my agent sends them to him, but I sign the receipts.

Q. You refused though to accept it from your Committee?

A. He did receive it.

Q. Indirectly?

A. Yes, "with abundant caution," Judge.

Q. Mr. Sherman drew checks to you in the name of "Chanler" and you endorsed them as "Chaloner," did you not?

A. I did.

Q. Mr. Chaloner, if we were able to tell you that shortly after your appearance in this neighborhood, after your escape from "Bloomingdale," Mr. Butler acting through the advice of local counsel, made every effort to relieve your wants and meet your desires, what would you have to say to this?

A. That was natural upon the part of Butler.

Q. Is it not a fact that he did attempt to do this?

A. Not a "boo from a goose" did I hear from Butler, not a peep out of Butler, until I had been here for a full year, and Butler did nothing at all; he made no overtures to me that I remember, not the slightest; Sherman didn't make any overtures until 1903, and I had been here since 1901, and Sherman did not move—when I say *overtures*, Sherman didn't make any overtures of a fixed allowance; he waited for a year to see if I could not be frozen out, to starve me into submission, but he found I could not be starved and then sent a sporadic $500, which I declined, it was a pittance—I would not take it; he knew it would put him and the Chanlers in a hole because public opinion was against

what they were doing, the way they were doing and this section of the country was very much against it—they were in a position to know it at all events—and it finally worked them so that Sherman offered this $6,000.00 allowance and I took it, but this was not until 1903; I never received an offer from Butler that I recall, and I would recall it; no communication direct or indirect from Butler; he died about a month after I was pronounced sane—it appeared to kill him.

* * * * * * * * *

Q. You stated that Mr. Thomas T. Sherman would not pay your debts, he wanted to torment you; has Mr. Sherman not from time to time paid debts for you?

A. Yes, but only as the result of letters which I have written to him putting forward arguments for his doing so, he knowing that I could show him up in a book, as I had already done in "Four Years Behind the Bars of 'Bloomingdale'," and Sherman didn't like being shown up in a book, and he knew that was the best way for keeping me more or less quiet, and so that is the way I have been enabled by literary threats to raise my allowance from $5,000 to $17,000.

Q. The increase to $17,000 made during last year then you are confident, was made because Mr. Sherman was afraid of your writing another book against him?

A. Not entirely. The raise of $17,000—that raise was accomplished by a legal threat instead of a literary threat—I was going to "have the law on him" if he did not, and told him so,—my case now being before the court I am in position to "brace" Sherman through the court and get an order from the Federal Judge demanding that he meet my necessary legal expenses, etc.; and it was on that threat that I boosted my allowance from $15,000 to $17,000—if he did not do it I would bring him up before the Federal Court through my lawyers.

Q. Who made that threat to him?

A. I did.

Q. By letter or word of mouth?

A. By letter written, as it always was, by my agent, Mr. Money, as I remember it; also my lawyer, Mr. Ware, called on Mr. Sherman and told him in so many words—just what his instructions were—to go to the Federal Court and get an order compelling him to raise this money, if he didn't do it without that compulsion.

Q. Mr. Sherman had been steadily paying the expense of the depositions in this suit heretofore without any threats?

A. No, always had to coerce him.

Q. He never made any payments then in this suit for your deposition without coercion?

A. I won't say never; but there was always a marked disinclination on the part of Thomas T. Sherman to relieve my financial needs; his correspondence proves that; he would back and fill and fiddle and side-step and talk in a foolish way on paper, but it was very evident, reading between the lines, that he wanted to make it as unpleasant for me as he could, for a man of my income, with an income of $50,000 or more, to split hairs about paying me, and he would actually not hesitate to lie, Sherman would not, in this matter; and he had the gall to write me a letter, or his side-partner, Joseph H. Choate, Jr., to the effect that Sherman could not give me any money without a specific order from the Court, which is an unqualified lie, because Sherman had given me money without a specific order from the Court—Choate tried to make out—if not Sherman himself, as I have brought out in the beginning of this century, or a few years back, Choate tried to make out Sherman was the dumb mechanical repository of my money without any authority from the court—he used his discretion as my falsely alleged Committee of my Person and Estate in relieving my wants and making me comfortable—Choate tried to make out that Sherman was a sort of safe or box for holding money, and that he could not do anything, could not use any discretion about advancing me money; that he had to get a preliminary order from the court, by which I mean that the order had to be preliminary to the advance of any money to me. That is ut-

terly false, because Sherman had advanced me money before, a year or so before, specific sums, the result of my prodding and pushing him, without any order from the court.

STEELE, JUDGE HIRAM R., PLAINTIFF'S CONNECTION WITH, 714-723.

Q. I understood you to say, Mr. Chaloner, in your previous deposition that Mr. Sherman through a fictitious suit had robbed you of $20,000. Will you please tell me where that suit was instituted, and what was its nature?

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A. Oh, yes, I think I did; I am quite sure I did.

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Q. Did you not know this action was binding as a proceeding *in rem* against all your property and protected Mr. Sherman from any attack upon his action?

A. Presumably, yes, on the evidence.

Q. Was not Judge Hiram R. Steele appointed special guardian *ad litem* to protect your interest in that suit?

A. He was, Judge.

Q. Did he not fully advise you of the proceedings therein?

A. He did.

Q. Were you not in constant communication with Judge Steele in regard to that suit?

A. I was.

Q. Didn't Judge Steele go South to confer with you about this case?

A. He did.

Q. Where did he visit you?

A. In Alexandria, Virginia; we had a conference there of several hours.

Q. Did he explain the whole nature of the suit thoroughly to you?

A. I don't remember that so much. Our conversation was not so much regarding the suit as regarding my affairs and my case; and the suit I was going to bring in the Federal Court, or rather had brought; I talked to Judge Steele—all the talk was about my Federal case—there was practically nothing said about the other—almost nothing—there was no real occasion for it—Sherman was "striking" me for these claims, and Judge Steele was to put up a defense, and the defense he put up was perfectly flimsy; as I will state in a moment; but before I get to that, I will say that he was excessively interested in my Federal case, and listened to me for about an hour, developing my plans which I have since carried out—this deposition is part of the plan—I had no idea then of deposing—but I made the statements made on this deposition; and Judge Steele said, after I had spoken to him for about a solid hour—he is a very cold man, a very unenthusiastic man—he turned to me and said, words to this

effect, "Why, if you came to New York, and told the Court and jury what you have told me, in the same calm way that you have told me, it would be the biggest thing that ever struck the town." Afterwards Judge Steele, who is a very intelligent man, and a very shrewd lawyer, and very interesting conversationalist—I like him personally—afterwards Judge Steele showed the cloven hoof. He made the most flimsy attack on Sherman that could possibly be made; it was extremely skillful because he spun a really, apparently, quite substantial case out of a spider's web of technicality so fine that the referee put his foot right thrugh it, as I have stated on direct; and instead of attacking these proceedings on their fatal sides, where the Supreme Court of the United States thunders against them, in the decision handed down in which Chief Justice Waites concurred, namely, that notice and opportunity to appear, and be heard are jurisdictional in their scope: on the two deadly weak points in Sherman's case, that I lacked notice in '97, and through spinal trouble and being bed-ridden for weeks, lacked opportunity to appear in court, twenty miles from my abode, in the '99 proceedings before the Sheriff's jury—instead of briefing those points, Jundge Hiram R. Steele skilfully *dodged* those points; and *thundered and lightened* on the flimsy technicality that one or more of the jurors, forming part of the Sheriff's jury, had not been sworn in before he rendered his decision, but was sworn in after he, or they, rendered his, or their, decisions, which cured the lack of formality; and Judge Hiram R. Steele's brief was swept away, and Sherman plundered my estate to the tune of $20,000, and Judge Steele personally helped Sherman and the rest of them—when I say plundered, Judge Steele plundered—I mean rlatively—he took a fat fee—how much I don't know—in the first sweep of the "swag" of my $20,000 of accumulated income they forgot to take down—take away—$2,500, as I remember it, that was the amount—as burglars and Yeggmen, as safe-blowers frequently forget to take Government bonds and bills, or frequently overlooked them rather than forgetting. Well, these burglars overlooked $2,500, when they cleaned out my safe, or rather my till, and

after that I wrote to Judge Steele and said, "Here," words to this effect, "Here, Judge, they have left $2,500; now, divide that with me, give me 50 per cent. of that and you take the rest. I think that is fair, that out of $20,000 that has been taken I ought to have half of that $2,500." I spoke, of course, jocularly and pleasantly, nothing personal at all; I was always in the pleasantest relations with Judge Steele, and never did I say anything disagreeable to him that I remember; and, if I did, it was easily explained away, it was simply to push him to do something which he either did, or did not do, as the result of the push—and here is an instance of when he didn't materialize as a result of my push; He wrote back very gravely that he could not think of such a thing as to divide this $2,500 remnant of the "swag" with me. So they made another raid on my till, those burglars aforesaid; and this time they didn't forget anything, they overlooked nothing; *and they swept away and took down the said* $2,500 *and I didn't get so much as twenty-five cents out of it.*

Q. So you think that Judge Steele betrayed you in this case also?

A. Beyond the shadow of a doubt, on the evidence of his flimsy, ridiculous brief; instead of briefing those points—he touched those points, of course, but he did not brief them—he did not bring any authorities to bear on them.

Q. Did he not write a most elaborate brief setting up a defense upon the merits, upon the technicalities against the lunacy proceedings, including the constitutionality of the very law?

A. No, not at all. His brief hinged entirely on the flimsy technicality, as I have stated, that the jury—one or more of the jurors forming part of the Sheriff's jury—had not been sworn before they took their seats as jurors, but were sworn afterwards, which cured it. That was the gist of his brief.

Q. Was not the decision in favor of Mr. Sherman upon all points raised by Judge Steele?

A. Yes, he raised this one point, as I say; that was not against Sherman; that was against the proceedings at

the Sheriff's Jury, and the Judge, after backing and filling—I said Judge—I mean the Referee—and making a play as though Steele had raised up a very severe and threatening barrier, saying in effect, "Don't think, Judge, that I am not giving your brief grave consideration; I have thought over it night after night; I have thought over it for weeks and weeks," words to that effect—possibly the word "weeks" was not there—possibly it was. It was well played. This farce, this judicial farce was well played by all the actors in it—even the Referee played his part well. This was said before a third party who reported it to me, a friend of mine, who was known by all the parties to be a friend of mine, a Virginian, a man who lives in Virginia; lately he went on there and it was before him that the Referee made this remark, of course, knowing that my friend would report everything that he heard, that he had a right to report, that he heard spoken in natural tones before him; and this was a play on the part of the Referee to make me think that the Referee considered that Judge Steele had a bona fide BRIEF instead of a flimsy, bogus life insurance BRIEF. I use "life insurance" in a derogatory sense, in the sense of the rascally methods obtaining in Life Insurance before the great revelation—this term is applied to the great upheaval in Life Insurance started some years ago which stopped the peculation, or what amounted to peculation of the stockholders by the officers of the concerns—and Judge Steele is a Life Insurance man, he is affiliated with those companies—if I remember rightly, with the Mutual or the New York Life; he was mentioned at one time as a member of the committee which was to take over one of these Life Insurance Companies—it was not the Equitable I am sure of that, quite sure of that; he is an insurance lawyer, an insurance man, and accustomed to all the juggling and trickery which that term implies, and he simply used it to the Queen's taste in the fake brief he drew.

Q. You think, therefore, that Judge Steele was untrue

to your interest and gave you good and sufficient reason for thinking of him as you do?

A. He absolutely "laid down" on me; that is the reason that he was selected, because he *would* do it; he was approached, on the evidence, before he was given the position of Guardian *ad litem*, and it was found out where he stood, for or against me, and he was only selected on that account; he was to play the game as they wanted him. That is evidence which, I say, as a lawyer, exists, looking at the facts with the mind of a man of the world and particularly of a lawyer. That is the situation, those are the facts.

Q. You think, therefore, Judge Steele united in this conspiracy against your property in New York City.

A. I am forced to that conclusion on the evidence.

Q. Is not Judge Steele a lawyer of high standing and character in the City of New York?

A. Undoubtedly; he is an ex-Federal Judge.

Q. Was he not formerly a lawyer—I mean a judge of a court in Louisiana?

A. Yes, I think somewhere in the South, at "Natchez under the Hill."

Q. Didn't Judge Steele write to you in regard to services rendered you in this accounting proceedings and did you not reply saying that you thought $5,000 was not an unreasonable amount to allow him?

A. Possibly.

Q. Didn't Judge Steele apply to the Supreme Court in the matter and get an order based on a petition which set forth your letter directing Mr. Sherman as your Committee to pay him $1,500 additional to the $3,500 allowed him as compensation as Guardian *ad litem* in this accounting action?

A. Possibly.

Q. Having refreshed your recollection by this statement are you still of the opinion that Judge Steele acted the part of a Yeggman and practically burglarized your estate of this $5,000?

A. Under the circumstances, yes; of course I knew he

was a lawyer; as a lawyer I do not expect much from the average lawyer.

STIGMA OF INSANITY, 610-612.

Q. Now, Mr. Chaloner, I note with pleasure from your previous answer that you do not think it is a reflection upon a man to be mentally unbalanced for a while; does not this very often happen to gentlemen and ladies who have to be committed for a short while, and, as soon as they recover, come out and go about their business, and no one thinks anything of it?

A. That is very crafty, Judge, very crafty. I notice from your previous question, Judge Duke, that you state "I do not think it any reflection on a man to be mentally unbalanced for a while." When I said it was not a reflection on a man, I meant, as the contact shows on his honor. I said he was not responsible for being insane. No crime attached to it. It was a misfortune. I didn't mean by that that it was a desirable thing, and I didn't mean by that that it was not a stigma,—because I have been saying all along that it was a stigma, a vile stigma, to place a man—to place on a man—not *in itself vile*, but it was a vile *thing*, it was a vile thing to place the stigma of a diseased mind on a man who had a healthy mind. It interfered with his breadwinning capacity; it destroyed his ability to be a lawyer; nobody would listen to his opinion if he was a lunatic; and when I said what I did it simply referred to the lack of moral responsibility. There is no moral responsibility implied in insanity, of course. It is a misfortune. That is why I hasten to correct, and I don't want to have it understood that I think it no stigma and misfortune for an individual to have so unfortunate a mind that it breaks down, so fatally as to become insane; it is the most serious criticism that can be made against a man's mind; *nothing* can be more serious. It is far more serious to make that against his mind than that he is vicious. A man can have a very brilliant mind and yet be very vicious. Of course,

that is indisputable; so that it is the very worst thing you can say of a man's mind or intelligence, viewed from the point of his brains, is that he is liable to go crazy; and in that way it is the most serious stigma that can be applied to a man that belongs to a profession, because a profession is served by the brain—not by the muscles, but by the brain. A laboring man lives by his muscles and a professional man by his brain. I don't mean to say that a laboring man does not have intelligence, because he has, he *has* intelligence, but his intelligence is transmuted in muscle power; in the case of a *laboring mind*, whereas it is direct intelligence translated into direct intelligence, in the shape of words or writings, which wins the bread of the professional man. I take occasion to make this explanation that I do not consider it, for one moment, a fair charge. It is the worst charge you can make, against his mind, worse than if you said he was a murderer. Against his mind, you understand—not against his morals.

Q. I think, Mr. Chaloner, you probably misunderstood the effect of my question; and I simply want to ask you perfectly frankly if it does not happen to a great many people when they have to be committeed for mental trouble, and that after a short space of time they recover, just as well as they ever were before, go about their business, and no one thinks any less of them for it?

A. I have to say, Judge, that has not been my experience. It is extremely rare, and is a thing which is never forgotten about a person who has been unfortunate enough to have that happen to them, and is always thrown up to them; and when people are ill-mannered enough or guilty of saying so, they would accuse them of being ex-lunatic; or call they "dopey," or "dippy," or what not.

VISITORS TO PLAINTIFF IN "BLOOMINGDALE," 487-527.

Q. What persons, Mr. Chaloner, visited you whilst in "Bloomingdale," as far as you can recall?

A. Col. William Astor Chanler, in the early winter of

1898, when he was elected an Assemblyman to the New York Legislature. He visited me there—this has been described in the direct—Mrs. Elizabeth Chanler Chapman, wife of John J. Chapman, visited me in June, 1897, also described in the direct.

Q. Chapman?

A. Chapman, yes; Elizabeth Chanler Chapman, formerly Miss Elizabeth Chanler, now the wife of John J. Chapman, the cousin of Col. William Jay, also implicated in this conspiracy against me to the extent of robbing me through his associate, Flamen B. Candler, in the 1899 proceeding before the Sheriff's Jury; Col. William Jay, counsel for the New York "Herald," and member of the Corporation of the New York "Herald," whose name is printed on every edition of the New York "Herald," or it was the last time I saw that sheet. I do not take that sheet now; I ceased to take it some years ago. Augustus St. Gaudens, the great sculptor, now dead; Stanford White, the great architect, now dead; Albert Legg, the inventor of that great mechanism, that great mechanical attachment to the sewing machine, which will be in every household in the land. It is free now! I have nothing to do with it now, but to get the people to put it on their machines. They can have it if they want it. It is free now. The people can make them put it on their machines if they only tell them that they want it—the self-threading sewing machine attachment; the greatest attachment since Howe invented the sewing machine. I say that with all reserve and all correctness as a lawyer; but as far as I know there has never been invented for the sewing machine since Howe originated the sewing macine, an attachment equal in importance to the self-threading attachment. The inventor of that was Albert Legg, also deceased. He visited me, also Prescott Hall Butler, deceased, visited me; also, H. V. N. Philip, my former law partner, visited me, in the interests of the other side, on the evidence. From what Capt. Micajah Woods told me in reference to that gentleman, Mr. Philip did all he could to "queer" Capt. Micajah Woods when he carried my letter dated July 3, 1897,

to that gentleman, to "queer" it by saying, in effect, "don't do anything without informing me." That raised doubts in Capt. Woods' mind as regards my sanity, because I had selected Mr. Philip to take the letter to Capt. Woods for the simple reason I could not get anybody else to do it.

Q. Philip?

A. Philip, yes. I could not get anybody else. I took it out after waiting months to post the letter—I wrote the letter July 3d, and I could not post it at all, and the only way I could get it out, was to give it to Philip, October 13, 1897, there or thereabouts, on that day; and he being in the interests of the other side, as his actions proved, as shown by Capt. Woods, treacherously betrayed me and poisoned my reputation as a sane man in the eyes of Capt. Woods by telling him not to do anything without consulting him. I distrusted Philip and finally have got so that I don't now put any confidence in what he says at all, and know on the evidence that he is thoroughly with the other side, and I distrusted him from the first, because his manner was suspicious: his manner was hostile; he came to me when I sent for him, but when he came he was always cold, was always negative and veiledly hostile; Philip was another man that came. Let me see, that is about all. Oh! Oh, yes—I remember—yes, certainly—far from least of my callers was no less a personage than United States Senator Newlands, Frank Newlands, if I remember his first name rightly, of Nevada. He married a charming cousin of mine, Miss Edith McAllister, the niece of the great Mogul of society, Ward McAllister; and Miss McAllister married Newlands and he was then Congressman from Nevada; he has since become United States Senator. This is rather interesting. *I am glad you asked me this question, Judge Duke, I had forgotten to bring in Brother Newlands on direct.* I remember now that he did call on me, but in the rush of events caused by Judge Hough's decision that this case must be finished by a certain date, and also by Judge Hand, of the Federal Court, endorsing Judge Hough's decision, saying that if the case was not ready it would go to the foot of the calendar,— that the case must

go to the foot of the calendar if not ready, by which I mean that Judge Hand said that the deposition must be concluded; it was not that the case was ready to go on, but it must be concluded. In the event of those two decisions I, of course, was exceedingly hurried and it escaped my memory to mention Senator Newlands of Nevada, and I am glad, very glad, the opportunity occurs now to mention that gentleman and put him on the list. He acted the part of a spy of the first water. I had met Senator Newlands at Chevy Chase, in Washington, the celebrated suburban Country Club of Washington, where no less a personage than His Excellency, President Taft, strikes at the evasive golf ball, plays golf, and where the well-known Chevy Chase hounds, fox hounds meet. I went there away back in the year of Our Lord, 1893, and visited Senator Newlands at his house there at Chevy Chase and dined there. Chevy Chase was then just beginning, and Senator Newlands asked me if I thought it would be a success as a real estate proposition. He is interested in it financially, selling property, as I understand. I told him unhesitatingly that I was convinced it was a sure thing in real estate, because it was founded on sound lines; that fox hunting was excellent sport and one which society would always foster; it was manly and interesting and thoroughly good from, "thoroughly English, you know"; and that it was a sure thing, and golf also was a sure thing; that it was the only game old men could play with physical benefit to themselves and pleasure, the physical *outdoor* benefit; that they can always play billiards and pool ,which is also good physical exercise, but that is inside; that it was the only game that old men could play and it was bound to be a good thing, for the reason rich old men could keep the golf ball rolling—rich old men; that I was convinced Chevy Chase was a financial success; that it was a financial proposition which was bound to pay a handsome return in time, as much so as Tuxedo, founded by that financial genius, the late Pierre Lorillard. He showed genius in his foresight in buying the mountains and valleys and lakes which are represented by the Tuxedo property, buying them when they

were nothing but wild, waste land, and selling them at so much a front foot to rich New Yorkers. That was a stroke of genius. Lorillard was laughed at when he first did it; said he was a dreamer, a visionary and goodness knows what not. It turned out a complete success and proved he was a financial genius besides being a sportsman of the highest order, the first American winner of the blue ribbon of the English Turf, the Derby, Chevy Chase was founded on parallel lines with Tuxedo, and I assured Senator Newlands that it was a success in time inevitably. He was very friendly and pleasant with me, but I saw no more of him from 1893—owing to the stress of business affairs and our being—and he living in Washington and I living in the South—during 1893 I lived in New York City, as aforesaid, on the direct—I saw nothing of him from '93 until '98, the late winter of 1898, towards the spring. I was surprised to have the card of Senator Newlands (then Congressman) sent up with the word that his wife was there. I was delighted. They wanted to know if I could receive them in my cell. I sent back word that I would be charmed and they were both shown in, to be exactly accurate, they met me in what is known as the "Administration Building" from which "Bloomingdale" is administered—not in that wing of the asylum, not in that ward which I occupied, Macey Villa—I met them in a reception room in the Administration Building. My cousin kissed me affectionately. It turned out to be something of a Judas kiss; she was there to spy on me with her husband; she kissed me and complimented me on my vigorous appearance. We had a most charming conversation of an hour or so, and they went away asking if they could come again and I said I would be delighted to see them. A year rolled by. In '99, in the Summer of '99, the early summer of '99, or possibly it was the late Winter of 1900—on second thought, this refreshes my memory by reviewing the past as I now do on the stand—it was the late winter of 1900 when Newlands came to see me, and it may have been '99 when his first visit was made—those are immaterial, those dates—the material point is, that Newlands came to me twice, at one

year or more intervals between the visits and the last visit he came, the last visit he paid, was when I was on my what is called at "Bloomingdale" *parole* he visited me in my cell and they had waited so long to see me that I was sure they were spying, so I did not care to see Mrs. Newlands, so when that card was sent up—Mrs. Newland's card was sent up—I told my keeper, in effect, "I will receive the Senator, but not Mrs. Newlands." Of course, I did not say "Senator" then, because he was not Senator, but I use the term now, because he is Senator and shall in the rest of this deposition speak of him as Senator Newlands, it being understood that he was not then Senator but Congressman.

To continue: Senator Newlands came up to my cell and I was in bed, as I always was when I was not out of doors, at that stage of the game, in '99, in 1900 or 1899, because I was so fatigued with this spinal trouble, that I had to lie down all the time, unless I was walking out of doors, with one solitary exception of the weekly entertainments in "Bloomingdale"—not entertainments, they were no good, they were bum, as I have explained, they were cheap fakes, they were not worth looking at—but the weekly ball or dance was worth looking at and I went to see that every week and never missed a week during the three years and eight months, I never missed a dance when I was there—I didn't dance—but I never missed one, and that was the only time I was not lying down, when I was sitting up on a chair during the hour or so of that dance watching the lunatics dance. It was very interesting as a study in psychiatry, in lunacy, to watch them dance. The female lunatics were not allowed to dance with the male lunatics, naturally; they were forced to dance with Irish keepers, and the male lunatics were forced to dance with Irish female keepers. The Emerald Isle furnishes ninety per cent. of "Bloomingdale's" keepers and it is a very good thing it does, because Irishmen are warm hearted, they are warm hearted; there is no more warm hearted people than the Irish; I say that from my own experience for three years and eight months behind the bars; I had an Irish keeper for three years and eight months that I was in

"Bloomingdale"; I did not get an American until the last few months when a man from Wisconsin, who had been in a racing stable and got stranded in that neighborhood and turned keeper for the nonce was on me, but he was the only American that I remember on the list of keepers that I had. It was very funny to see these coarse Irish keepers, regular clod-hoppers—nothing against their honesty, I am only speaking of their refinement—dancing with delicate ladies, refined ladies, who happened to be afflicted with lunacy: I don't say there was anything out of the way at all, it was absolutely right; but it was very interesting from a psychological point of view, to see the clod-hoppers with bear's grease on their hair and hair brought down in a band and plastered onto their foreheads and curling their hair so that it looked like horns—the regular clod-hopper curl, if I may coin a phrase, the regular Irish twister, used and patronized by keepers, and the New York police; they brushed their hair that way, at least I have seen many of them that did. It was fun to watch these fellows waltz with these delicate ladies, and it passed many a weary hour, many a weary hour for me, watching the gyrations of these clod-hoppers with their arms around the waists of delicate ladies. That was one of the things that attracted me in "Bloomingdale," this anomalous situation. We live in a very queer world (I flag the Docs). With that exception I never did anything but lie down in "Bloomingdale," and that is why I "beat the game." I rested myself in a very tiring position, being confined illegally in a mad house cell; I rested myself by confining myself to a horizontal attitude, by resting my spine.

I was in bed when the Senator came; Senator Newlands called on me, he was very crafty, oily, he is a very oleaginous individual, in fact, he is not pretty to look at; no man could call him pretty to look at; he has got more freckles on his face to the square inch than I have ever seen even on a boy's face, and his freckles are all of a dark brown color. Senator Newlands is far from pretty. He has got a dark brown, snaky eye, an oily eye, the kind of eye that looks as though it had a coating of kerosense oil on it; it is oily; it is a sort

of oily Gammon, the character of the lawyer, the profound lawyer he was, in the immortal book "Ten Thousand a Year," by Warren; "oily" Gammon, of the firm of Quirk, Gammon & Snap, which is beautifully developed in my case by the firm of Evarts, Choate & Sherman; in this book "Ten Thousand a Year," the character of Tittlebat Titmouse appears. He suggests Sherman. Tittlebat Titmouse was pretty much of a cad himself; Tittlebat Titmouse would open letters, I think, beyond a doubt, as Sherman has opened letters to me; so the firm of Quirk, Gammon & Snap of the immortal "Ten Thousand a Year" was beautifully represented in my case. Here was oleaginous, oily Gammon—Senator Frank Newlands, of Nevada—there trying to pull my leg and pull the wool over my eyes and, *do* me—Ha! Ha!—by playing the spy for the Chanler gang. I didn't let the Senator see I was "onto" his "curves," as they said in baseball lingo; I didn't let him see that. The first year that they came, he and his wife, to spy on me, to find out if I was alive, if I could "stand the racket," "if I could stand up" under "Bloomingdale," they found I could, that I was vigorous. A year or two later when they called they came to see if they could not get me out of "Bloomingdale" and save their faces' by which I mean their employers' faces, the people who had sent them there, the said celebrated now, I think I may say, conspirators, the Chanler family (I flag the Docs); Senator and Mrs. Newlands came there to see if they could not bribe me to shut up my mouth and sneak out of the side door of "Bloomingdale," and let it go at that, and hush up this outrageous crime against the liberty and property of a citizen of the great State of Virginia, the State of Washington and of Patrick Henry and of Randolph of Roanoke. Senator Newlands played his little game thus: It certainly was a most delicate "approach." If he had been a confidence man, if he had been a "come on," if he had been a "hand-shaker," he could not have played his cards with more professional acumen and gusto than he did; nothing could be more delicate, nothing could be more subtile than his "approach" on the second and last visit. Senator Newlands after exchanging greetings, and without any

remark on my having turned down his charming wife, by not allowing her to come into my cell, which silence on his part let me know that he was a spy, because if he had been there with anything but malign motives he would have resented that implied insult which I intentionally gave, not to meet his wife, to him—I wished to let him know that I branded them as spies by refusing to see his wife—if he had been anything but a spy his natural self-respect as an American citiden from the State of Nevada would have prompted him to say, "I demand an explanation from this man who won't see my wife, but will see me." No such natural remark by Senator Newlands, nothing of the sort; he took everything that was coming to him, that I gave him, he swallowed it all, because he was there as a spy, for all I know as a paid spy, and for all I know as a spy paid out of my own pocket, for all I know he was paid a fee, a legal fee, for coming there and spying on me, paid by Prescott Hall Butler, at that time the falsely alleged Committee of my Person and Estate. So, like the paid legal spy he swallowed this implied insult and suavely led up to his approach as follows: He said, apropos of my having a "parole," he said, "How would you like to have a more *extended* parole?" These were his very words. If my salvation depended on it, I firmly believe on my immortal soul—(I flag the Docs)—I am not unique in this, I believe that others have immortal souls, I don't consider that I have a monopoly on immortal souls (I flag the Docs)—that I would be willing if my immortal soul depended on it, I would be almost willing to say that this is word for word because his words were so branded in my memory by their extraordinary nature that I have never forgotten, and this quotation that I have given is word for word, as I remember it, and as I would be willing to stake my soul on it *almost*. This monstrous proposition to me amazed me, but I had cultivated for years a "poker face," by which I mean a face which hides my emotions, which does not express my feelings unless I give my face permission to express my feelings and then it does, so that it is impossible to surprise me into a facial expression of s

prise. It is almost impossible, so wicked is this world and so deep and manifold is the wickedness thereof, and from being in that hell of "Bloomingdale" for four years nearly, and fighting ever since to get my property, so wicked is this world that very few things surprise me, no matter how wicked they are, no matter how disgusting they are, no matter how startling they are, they don't surprise me, because I expect it. Man is damnably bad. I believe with Jeremiah, "the heart is deceitful, above all things and desperately wicked," and I am not surprised that God Almighty was sorry that he had created man, as I have stated and quoted on the direct; it was a very bad job on the part of the Almighty, was the creation of man, a very poor job in only too many instances. The Almighty is excused—I state this reverenntly—for having made this bad job of creating man from the fact that he created such a man as George Washington. George Washington is the saving grace for the whole American Nation. If all the race of the Americans that ever lived were bad eggs and foulest, George Washington would excuse the creation of the American people, so God-like was George Washington, so honest! I accentuate this fact that, although the Almighty did do a bad job in creating, it was not His fault; it was man's fault. Well, having this idea of mine, which is forced in on me from bitter practical experience, I am a very hard individual to surprise, and, if I am surprised, my face is harder to surprise than is my mind. My face did not by any manner of means show the surprise which my mind received at this proposition of Senator Newlands. I saw that I was up against a very skilful bunco steerer, a very successful confidence man in the shape of Senator Newlands, of Nevada, and I saw that if I was to "save my bacon," if I was to protect my game and cover my flanks, to use a military expression, I would have to play good poker, I must not give away my game, so I made no reply to Senator Newlands' extraordinary proposition. I looked at him benignly, with an almost sacerdotal expression, of Christlike charity and sympathy and good fellowship. I gave him a "glad hand" look. I just looked. He then repeated his preposterous proposition afore-

said, hoping, of course, to draw my fire. I had no intention in the world of having my fire drawn, but if I didn't give the exact answer, and there was only one answer to be given in this game, he would pierce my line, he would penetrate my intentions, so I—to use a fencing term—I riposted, I parried his thrust and thrust him in return, by which I mean, I forced him to reframe his question by my reply to his question. My reply was this; before giving the reply, I will say that this reply is not so very bad—I remember it—this was my reply: "This is the first time that that proposition has been presented to me." Any lawyer in the sound of my voice will know that that was a rather guarded statement on my part and did not give away a scintilla, a jot or tittle of my position. Senator Newlands was silent on receiving my said riposte; after a very brief reflection he then said, in effect—I won't attempt to give *his* exact language, because I have not got that in my mind word for word as I have the first two remarks, but this is the gist, I say under oath, and *may be* the exact language: "Well, er— if after considering this proposition you are willing to accede to it, will you let me know?" To which I truthfully said unhesitatingly: "I will." This was a long time ago, and, as I speak the ghost of the past rises before me (I flag the Docs), by which I mean that I remember more of this conversation than I have just given; my memory does not in the slightest degree shake or alter the statement already given and of record, it simply adds to that. Thus, during the conversation before the last remark before quoted of Senator Newlands, I wished to and did—to use a military phrase—(I flag the Docs) search his trenches; I wished to discover just what he meant by his extraordinary proposition and extraordinary words, "A more extended parole"—when I say "extraordinary words" I mean extraordinarily veiled words, extraordinarily obscure words, extraordinarily—(I flag the Docs) mystic, so to speak, words—extraordinarily oracular words—(I flag the Docs)—extraordinarily cryptic (I flag the Docs) words. I could not believe my ears. It darted through my mind that they meant to bribe me to hush up, and were so scared of what would happen

when I got out that they were willing to let me go scot f
and give me my property provided I kept my mouth sh
That flashed through my mind. I penetrated the purpose
Senator Newlands, a. the event proved, but I wished to
sure I had done so, so I said, in effect, in this effort to "sear
his trenches," I said, in effect, "What do you mean precis
by your words, a 'more extended parole,'" to which Senat
Newlands replied, in effect, "Why, er—a parole which p
mits you to go further than your present parole does,"
which I replied, in effect, "by which you mean?" to whi
Senator Newlands replied, in effect, "why—er—that y
might go beyond the County of Westchester." I said,
effect, "Ah!" whereupon there was a pause; whereupon, Se
ator Newlands said, in effect, "You might go even further
I said, in effect, "By which you mean?" He said, in effe
"You might go to New York City and even further." I sai
in effect, "How much further?" He said, "Anywhere y
like," in effect. I said, in effect, "Go to Europe?" He sai
"Yes, certainly, in effect—"anywhere." I then saw the v
lainy of Senator Newlands' position. He came there with
bribe on his lips attempting to hush up a crime, attempti
to bribe me to be silent forever on the iniquity which h
been perpetrated against me as a citizen of Virginia and ci
zen of the United States, and in exchange for this degradi
proposition I was to be given my property and allowed
sneak through the United States and Europe as an ex-lunati
with that abominable badge on my shoulder, that villainous
because false (of course, insanity is not villainy per se; it
only villainous when it is alleged and falsely alleged with
view to crime, or falsely alleged without any other view th
to lie about it)—I was to sneak through Europe and t
United States the rest of my life as a rich ex-lunatic, as wh
the New York "American" once dubbed me, "The man wi
the weak mind." This appeared in the New York "Ame
ican" shortly after my escape from "Bloomingdale" was ma
known to the press, and a general alarm was sent out to t
police of the large Eastern cities, a police description of m
was published in the New York "American" in which it d

scribed me, which said police description is given at length in my said social history "Four Years Behind the Bars of Bloomingdale," or "The Bankruptcy of Law in New York." In this article the "American" said, in effect, "SLEUTHS, men trained to hunt down men are on the trail of John Armstrong Chanler"—as my name then was—"will they catch up with the man with the weak mind?" words to that effect. This picturesque description of my weak mind stuck in my memory, and that is how I come to cite it, naturally. As events proved, I had, as I have said, penetrated the purpose of Senator Newlands in shamefully spying on me. The reason he did this was possibly—possibly was *two-fold*, on the evidence; first, that he was paid for it—I state that on knowledge and belief as a lawyer—he was hired by the Chanlers to do this—I don't know that, but that I cite on knowledge and belief, and the only hypothesis for me to base that on, on general principles, is that he was a lawyer, and lawyers don't go to see people unless they are paid for it—certainly not all the way from Washington to "Bloomingdale." Well, that was one reason. The second reason was a rather amusing one. I don't like to touch on this, but I have to, because this is a case of getting my property through stating all the facts without fear. As Lord Byron has well said, "Hell hath no fury like a woman scorned." Senator Newland's wife had been proposed to by Winthrop Astor Chanler in marriage. He had offered her his hand in marriage. She is older than he, some years older, and very generously refused. He was then hardly old enough to know what he was about, certainly regarding so momentous a proposition as matrimony. I do not say this to imply that he showed lack of taste. Miss Edith McAllister was one of the belles of San Francisco; her people were at the top-notch of the social world there, and also of the intellectual, as I have said; *Hall McAllister was one of the greatest, if not the greatest, lawyers the Pacific slope ever produced*, and he was then in the zenith of his fame, then getting $25,000 and 50,000 fees from great railway corporations, etc.; he was one of the opponents of Delmas, one of his rivals at the California Bar—San Francisco Bar. Far from criti-

cising Winthrop Astor Chanler then, in proposing to Miss Edith McAllister, it did his taste great credit. She was and is a charming lady, but *I* did not propose to Miss Edith McAllister. I lived in Paris studying art—criticism, studying painting and sculpture—that is, visiting studios of art and sculpture and visiting the Louvre Museum so as to be able to know a good picture when I saw it, and Miss McAllister was then studying music in Paris and I saw a great deal of her and used to take her to the theatre, and being a cousin of mine I—well, I never flirted with Miss McAllister—to be with a handsome woman and not flirt with her is an insult. I don't think I am unique in making that remark. I think that Judge Duke will agree with me, that to be with a handsome woman and not flirt with her and, provided she is not a married woman or—

Q. No, I cannot agree with you.

A. At all events—well, I take that as a hypothesis and I—I am regretfully forced to conclude that Miss Edith McAllister "had it in for me" because I did not follow in the footsteps of Mr. Winthrop Astor Chanler, and not having proposed to her, nor flirted with her, innocently, of course, I mean, and when I say "flirt" with a woman, I mean if it can be done innocently, innocent flirtation between unmarried people, not between married men and unmarried girls, or married men and married women, or unmarried men and married women—but innocent flirtation. Any member of the jury who has had experience in life with the fair sex will bear me out that a woman has a soft spot in her heart for a man who has proposed to her. Winthrop Astor Chanler had, and I state that under oath—he told me he had, told me with regret—regretted that she did not accept him. He proposed to her in 1883 when he and I visited them, or rather visited California; I did not see her, but he did; I missed seeing her; if I remember rightly, those were the circumstances. Miss McAllister had a soft spot in her heart, on the evidence. I appeal to the jury, those of them who have lived long enough in this world and have had enough experience, legitimate experience—with the fair sex—know that women who have been

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the recipients of attentions upon the part of men feel a friendly, have a friendly feeling towards those men in after years. Of course, the greatest compliment a man can pay to a woman is to offer her his hand, fortune and name. Mr. Winthrop Astor Chanler had done that, and had been refused. Therefore, there is no doubt about it whose scales would have kicked the beam if I was measured against Winthrop Astor Chanler in the affections of Miss Edith McAllister, now Mrs. Senator Frank Newlands, of Nevada. So that when the chance came up for Miss Edith McAllister, now Mrs. Senator Newlands to *do* her old lover a good turn, even at the cost of cheating me out of my good name as a sane man, a competent man, when that chance came up, I say on the evidence, that Miss Edith McAllister, now Mrs. Senator Newlands, took that chance and insisted on her husband making the journey with her to "Bloomingdale" from Washington, D. C., for that purpose, to pull the wool over my eyes and make me brand myself as a lunatic for life—as ex-lunatic for life.

In conclusion I will say that it is necessary for me to state that Senator Newlands is very much in love with Mrs. Newlands—very much to his credit—and Mrs. Newlands "wears the *breeks*"—she is the boss of that outfit—and Senator Newlands cannot call his soul his own. She is a very smiling boss, a very charming boss, *but boss she is*, with as strong a "pull" over Newlands as "Boss" Murphy has over Tammany Hall—"Boss" Charles F. Murphy. Senator Newlands is bossed at home by charming Mrs. Newlands, and therefore Senator Newlands had no choice but to call and spy on me, spy and "make good;" and thus did Mrs. Newlands stand by her old lover, Winthrop Astor Chanler.

Q. As I understand it, then, Mr. Chaloner, whilst you were in "Bloomingdale" you were visited by numerous people, and you had all the opportunity desired to correspond with lawyers and friends?

A. No, Judge, I did not. The people that came there to see me I could not trust to post letters or anything like that, by any manner of means. White I distrusted. Philip I trusted as much as I had to, and no more, with evil results.

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Senator Newlands I thoroughly distrusted; I knew he was a spy by his actions. Col. William Astor Chanler broke his word to me, as stated on the direct. He called in 1898 and said he would call again, but never did; he never showed his nose in the cell after a perfectly friendly conversation of about two hours duration about his affairs, political future, which was then just budding, beginning to bud and which was so successful. He was the man that put Lemuel Ely Quigg out of political business. He beat him in his own Republican district; it was a brilliant victory—reduced a ten thousand majority, or some such number and turned it into a Democratic majority. Mr. St. Gaudens called but once; that was during the first week I was there. Of course, I never had occasion, therefore, to ask him to post a letter. He called with Stanford White and Philip. He was a charming man, a splendid man, one of the finest men I ever met, one of the most gifted. He was an artist and knew nothing about psychology, and the mere fact that a man could go into a trance, such as I had with him, the so-called Napoleonic trance, so to speak, "got him guessing," and put him in such a position of not knowing "where he was at;" that when he heard that the doctors said I was "off my base," while not necessarily thinking so, he, not necessarily agreeing with them, yet, and nevertheless the fact that a man could go into a trance was enough to faze him under the circumstances, he knowing nothing whatever about psychology—not having any occasion to—he knew a world of anatomy—no better sculptor lived in his day regarding sculpture than St. Gaudens, but as regards what took place inside the skull he knew absolutely nothing, no more than any other layman—nothing about psychology—so I had no opportunity whatever to post any letters. People like St. Gaudens who were under the shadow of the medical profession, that is to say, who believed everything the doctors told them and did not use their own judgment, only people of that sort or people who were frankly on the other side, were permitted to see me. Friends of mine attempted to get there. One was Dr. J. Madison Taylor, of Philadelphia, the celebrated neurologist, chief of clinic for Dr. Weir Mitchell, who

was afterwards my expert in Philadelphia and testified for me at the Charlottesville proceedings, November 6, 1901, he wrote Philip and told him shortly after October 18, 1897, when it came out in the newspapers where I was, that he would like very much to see me, and asking for an appointment. Philip wrote him back, marvelous as this is to relate, and foully disgusting from a man who was my former partner, law partner, who was under so many pecuniary obligations to me—I had put him on his feet in New York, taken him from a clerkship in an office and put him on his feet as a practicing lawyer in a law firm, with his name on the door, in the Equitable Building, 120 Broadway, guaranteeing him $1,500 a year and allowing him much more, as has been proved on direct; this man turned out to be an absolute ingrate and traitor; he actually had the treacherous gall to write to Dr. Taylor to this effect, "I am sorry to inform you that Mr. Chanler (as it then was) is in such a deplorable condition that a visit by you would give you pain and injure him. Yours very truly, Harry Van Ness Philip." Another friend of mine, faithful friend, Major Thomas L. Emry, I regret to say since dead, one of my witnesses—a witness twice for me, once in 1908, once in 1901, at the Charlottesville, Virginia proceedings, November 6th, and later in the 1908 deposition; if I remember rightly, Maj. Emry wrote to Philip and got a letter to the identically same effect, holding me up as a deplorable mental wreck who could not recognize his friends when he saw them, would bring tears to their eyes, and a visit to me would cause me to go into a paroxysm of maniacal, man-eating rage, words to that effect.

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WHITE, STANFORD, PLAINTIFF'S CONNECTION WITH, 573-581, 591-596, 599-600.

Q. Didn't Mr. White visit you repeatedly in "Bloomingdale"?

A. He did.

Q. Did he not visit you in "Bloomingdale" a few days

after your commitment there and have a conference with you?

A. He did.

Q. Was not this old difficulty, if you may call it so, entirely made up and all your friendly relations resumed before Mr. White's visit to "Merry Mills" when you went North, just before you were committed?

A. Partially so. I have explicitly stated that I was alarmed, or at all events, concerned by Mr. White's change of attitude towards me; in December '96 he visited me at my rooms in the Hotel Kensington and, instead of being affectionate, the affectionate friend that he had been for years, he was cold and silent and only stayed about five minutes; and on top of that he wrote me a letter of an insulting nature, by which I mean, he did not call me any personal terms of insult, but it was insulting in the tone, coming from a man who was bound to me by terms of friendship second only to those of Damon and Pythias (I flag the Docs). In this letter he said, in effect, as I remember it,—it was years and years ago, of course—December, 1896—"I am glad you have gone back to Virginia; New York gets on your nerves and you need a rest; the best thing you could do under the circumstances," and more than all that, in the same vein, which, coming from Mr. White, who was the very apostle of New York life, the man who was most enthusiastic on the allurements of "The Great White Way," who used that as bait to get me to New York when he came on to lure me to "Bloomingdale" in '97, and begged me: "For God's sake come to New York for a plunge in the Metropolitan whirl"; for White found everything quiet outside of New York; he was extremely officious and this was endorsed by his previous brutal remark to me already cited by me on direct, in effect, at Monticello, at the said conference alluded to, or rather meeting, "Why in hell do you bury yourself in the country? Why don't you come to New York and live like a white man?" or words to that effect. Having placed this on record I again allude to my peculiarity of not burdening my memory with exact details.

Q. Now, Mr. Chaloner, I ask you to, or I will read to you Mr. White's statement—page 284—as detailed in your examination in chief, as follows: "The first thing he said to me was, with an expression on his face I had never seen there before, 'what the hell do you mean by burying yourself out here in the country; why don't you come to New York and live like a civilized man?" Now, having read that remark to you, Mr. Chaloner, I ask you considering the previous relations between Mr. White and yourself, whether that remark was not really a jocose one and not meant in any way to give offense, but rather, to use a slang term, "jollying"?

A. That question is very well put, if you will permit me to say so, and I at first thought it might be, and looked at White when he said that to see if he were bantering me, or jollying me, but his eyes had a piercing, cold, penetrating look, hostile to the last degree; and his tones were harsh and cold and he was thoroughly aggressive, and it was the tone of the voice and the accompanying look which convinced me of his latent hostility; and it was only after I had waited and considered the subject and, very rapidly, of course, the tone of the voice, and look of the eyes, and general expression of countenance, that I believed the words he uttered. I thought it was "a jolly," as you say, until I checked the words by the looks and the tone, when I was convinced that he was hostile.

Q. Can you give any reason for this sudden change from the relations of a Damon and Pythias to a state of such violent hostility on the part of Mr. White?

A. I cannot. It has been a cause of absolute wonderment to me, and I have never yet been able to solve that problem. I can only place that along side of Mr. White's change of base as regards women. He told me when we were discussing relations with the charming sex, he said, in effect, "I would not have a thing to do with actresses; they are absolutely artificial, and liable to be very mercenary. You can get just as much satisfaction out of an attractive girl off the stage, in fact a damn sight more, than you can from

the most accomplished actress before the footlights; and I would not be *bothered* with an actress; and a man that trapses around after an actress is a damn fool." I quote that at length, it was words to that effect, and fully as strong as that, to show the wonderful change in White later on. A man to change from that very wise and sagacious—I agree with every word he says there as regards the desirability of avoiding actresses; I don't necessarily, go any further than that—to change from that wise, worldly-wise, and thoroughly sound view of *liasons*, of love affairs, with actresses, to go from that sound ground, to supporting a certain section of the chorus in "Florodora," is a considerable step to the worse: and that is what Mr. Stanford White did, on the public record. Now, one thing that White did regarding the "Florodora" chorus, which I complimented him for doing, and I would like to have that credited to his memory—he did have some splendid qualities, White did, otherwise I certainly would never have been in the relations of Damon and Pythias—he was the most charming man until he went to the bad—he was generous and thoughtful of other people—and here is an instance. He had a standing order for every girl of the "Florodora" chorus, who did not have her teeth in good condition, to be sent to the dentist and the bill sent to him. That was a magnificent, altruistic, and truly Christian act; and I say that in all sobriety and soberness on the stand; and I don't know of any other man who would have done that, except, possibly, under certain circumstances, your humble servant. There is nothing to a women more of an asset than her teeth, more necessary for her appearance and health; particularly for an actress; and before the footlights, with an electric light shining right into her mouth, their teeth *must* be in good condition, or else they will lose their jobs. That is the truth. So White was most interested in sending the whole chorus of "Florodora" to the dentist, and having their teeth plugged with gold fillings—not amalgam—first class job—ten or fifteen dollars per tooth—and that I say was a most generous act, and most knightly and chivalrous act, and I shall always respect White

for it. That was one of the flotsams of his splendid character that remained after he went to the devil. Now, for a man who had this rock-ribbed position regarding the siren nature of the ladies of the stage about attempting to have flirtations with them—nobody has a greater respect for the stage than myself—the Paris Prize embraces the stage, as Edwin Booth endorses, as I explained on the direct—it is a magnificent profession, and I certainly think if I were put to it I would go on it myself, if I could not find anything else to do. It attracts me very much; if I could not get anything else more attractive—I mean, could not write law books—if I were pushed to it I would attempt to earn my bread on the stage. The press may say that I am talking through my hat. But I have been endorsed on this line by a perfectly intelligent and competent witness, Mr. Waldon Fawcett, who wrote a syndicated article which appeared among other papers—I believe it was syndicated—in the Times-Dispatch of 1908, on record, if I remember rightly; and he said in describing me, he said, I was not ugly enough to frighten a horse—he didn't use that language—but my modesty prevents me from stating what he said regarding my personal appearance; but he said, "Graceful as regards bearing, and with a voice"—this is word for word—"with a voice that any actor might envy." I will push that forward now to endorse the statement that I would take to the stage in the event of shipwreck and of my failing, which is most unlikely, and would enjoy the episode, and would not starve to death, because I have a fair voice, and won a prize using that voice in declamation so far back as 1876, took the first prize at the Military Academy, out of seventy-five boys or more, St. John's Military Academy, Ossining-on-Hudson. The Shakspeare I won on that occasion is on record in this case.

To resume: White suffered such a complete change of character in being able to eat his own words and go back on his position regarding the danger of the sirens of the stage, I mean those actresses who will form *liasons*—there are many who do not—I don't blame them I simply state that fact—

and to move from that position to being a frequenter of theatres, of green rooms in theatres, and more or less keeping actresses, on the evidence—this change of base as regards women was not more mysterious and not less mysterious than his change of base regarding men, by which I mean myself. He suddenly, without any rhyme or reason went back on me and took this dislike to me, and went over to the Chanler family within the twinkling of an eye, without any warning whatever; there was nothing which preceded this attack on me at "Monticello," and it came like a bolt from the blue, this attack on me, and I never have been able to explain it and cannot now, therefore, explain it. I simply instance this change of base regarding the stage as another example in Stanford White's make-up of wonderful change of character, and retrogression, which set in in 1896 and rapidly extended to his death.

Q. It was in consequence of this difficulty, Mr. Chaloner, that you are now satisfied that Mr. White united in this conspiracy to have you confined in a mad house for life?

A. I am.

Q. Did you not give Mr. Stanford White a general power of attorney to attend to your business, and did he not devote a great deal of time and give much attention to the business?

A. A limited power I gave.

Q. Did you ever revoke that power of attorney or take your affairs out of his hands?

A. No, I could not; I was put in jail immediately after giving it.

* * * * * * * * *

Q. Now, when Stanford White came to "Merry Mills" in February, 1897, did you not receive him cordially and very willingly go with him and Dr. Fuller to New York?

A. I received him cordially, yes, but I did not willingly go with him to New York; I went only at the stress of his exhortation to "for God's sake come and take a plunge in the

Metropolitan whirl"; I didn't do that for the sake of the plunge, for I had given that up—in "the Metropolitan whirl"—but to please him, because I am not a hard-hearted man on the record, among my neighbors; and that is where a man is known, among his neighbors—I am known as a man who is a friend of the poor and distressed; and I like to help the distressed; and when a man is very anxious for me to do a thing I don't like to refuse because of my pain and distress at disappointing him—and White had actually plead with eloquence to come to New York, and I went.

Q. You are convinced that Mr. White came to "Merry Mills" then as an emissary of your brothers and sisters with a fixed, set purpose in his mind to decoy you to New York to incarcerate you for life in a lunatic asylum?

A. I am regretfully forced to admit that.

Q. Dr. Fuller, I believe, came with Mr. White?

A. He did.

Q. What connection had Dr. Fuller with you in a professional capacity?

A. He had been my physician—I am a very healthy man and always have been, but I am a very careful man; and to be a little intimate, and if there are any ladies present I advise them to close their ears—I have great contempt for Bright's disease of the kidneys; it is to me the most insidious disease, bar one—cancer. Now, cancer cannot be forestalled by cautious treatment, and inspection of the physique, but Bright's disease can; and Bright's disease is only fatal, in a majority of cases, where it has got a hold on the system, by having insidiously entered the system, and invaded it, and implanted itself therein. Now, if it is known as soon as Bright's disease enters the system, Bright's disease can be counteracted, if not absolutely checked, and the only way to do that is to have your urine tested. I knew this, and I wanted to live, and always have; I have always enjoyed perfect health; and I ran across Dr. Fuller—he is a connection of mine by marriage—he is a cousin of the wife of George Winthrop Folsom; she was Miss Fuller—I ran across Dr. Fuller in New York and used to go to him and have my urine

examined about once every two years or so, not that I ever had the slightest indication of Bright's disease, and have not to this day; but I always keep a tab on Bright's disease, and not long ago just to follow out my old practice I was examined by Dr. John Staige Davis of the University of Virginia, just a few months ago, and pronounced absolutely O. K.,—not a sign—wasn't anything there and "only feebly acid," which, for a man who has a tendency to calcareous, or chalky, gout, is a very good bill of health; and shows I have no rehumatism in me; because "only feebly acid" and that shows that the urine—the urine should be inspected, should be examined and looked at for rheumatism—not only for Bright's disease—but as regards rheumatism and gout, the urine can give a line on the physique which nothing else can; and that this test is one which all men and people should have made every year or two, in order to find out where they stand regarding their physique, to take account of stock, so to speak; and my relations with Dr. Fuller were extremely pleasant, and he was not in the slightest degree connected with a madhouse or anything of the sort, and it came as a surprise to me when I found out that he was what they term in New York, what is known in the lunacy law of New York, as a "Medical Examiner in Lunacy"; he had that diploma on the "dead quiet"; I did not know he had it; nobody does know that a doctor has that. More family physicians than you can shake a stick at in New York have these diplomas, these deadly, dangerous diplomas, but their patients don't know it, and I would advise the people in New York to look and see if their family physicians have them, and to have an affidavit from them, and have it along side of their bill or receipt, to that effect; which would pretty effectually stop these doctors from appearing in any way against them in regard to their sanity.

Q. Had Dr. Fuller ever visited you before at "Merry Mills"?

A. Never.

Q. Were you surprised to see him there on that occasion?

A. Amazed.

Q. What reason did he give for his visit at that time?

A. That he had come—well, to tell you the truth, there was not much in the way of explanation. I was so amazed at the income of these—the arrival of these two gentlemen—coming into my house there in that way, coming up the back stai[illegible]ithout ringing a bell or anything of the sort, that there was not much explaining to be done about it. They opened up at once, White did, and wanted me to come to New York, and said something about his being on his way from Charlottesville or something like that from the University of Virginia, which I knew he was building at the time; he had business in that part of the country, so that was sort of an entering wedge, so he touched on Fuller very lightly—said "I have brought Fuller along," very vague, and kept talking so much that I didn't have much time to answer a question and Dr. Fuller's presence there was almost ignored by me.

Q. Did Dr. Fuller use any inducement to have you come to New York?

A. No, except—no, I may say he did not; it was White that did all the inducing. I don't hold Fuller guilty for anything.

Q. What time of the day or night was it that these gentlemen came to your house at "Merry Mills"?

A. Little after noon, or about noon, as I recall.

Q. Where were you at the time?

A. In my dining room.

Q. Were you engaged in any work at that time?

A. I may have been making some notes or something of that sort; I keep a journal, you know, and am liable to make notes in it at any time.

Q. Was your front door locked at that time?

A. My front door, yes, was locked.

Q. Was the balance of the house locked up?

A. No; the back door was open; I always kept my front door locked and keep it locked now. My house is in a very lonely position; I am a rich man and known to be so;

it would be very foolish to have my front door open; I am liable to be away a large part of the day; why not? the house being lonely, goodness knows who might slip in there. I keep my back door open, but the front door is always locked.

Q. What was the condition of your health at the time of this visit of White and Fuller?

A. Excellent. I was living on what I wish to heavens I could eat to-day, waffles and tea, English breakfast tea. I was eating three or four portions of waffles a day. I was very fond and am now of waffles, but unfortunately they don't agree with me, my system has changed—I cannot eat them at all; but there is nothing more fattening on the face of the earth than waffles which are made of wheat with other ingredients mixed in; and I was just as healthy as could be; and when I got to "Bloomingdale" there was not an ounce of medicine ever given to me.

Q. You went to New York with Mr. White and Dr. Fuller the same night?

A. Yes, that afternoon, from Barboursville.

* * * * * * * *

Q. Why did you give this power of attorney to Mr. White?

A. Because he was so insistent upon it, and he was absolutely honest about money matters.

Q. Did you not consider yourself at that time perfectly capable of taking care of yourself and affairs?

A. Yes, and so did White. I knew he was an unusually intelligent man and experienced in affairs, because an architect is a quasi-business man; he has to do with contractors and builders and all that sort of thing, and he is a practical man, as well as being an artist, and that is where he differs from painters or sculptors; and I know that White was dead honest and I didn't want to go to New York, didn't like it, and therefore I was far from averse to having a man looking after my office and staff, while I was taking a perfect rest in Virginia. That is the long and short of it, Judge.

Deposition 1908, Vol I, pp. 201-218.

EXHIBIT A.

(To be read in connection with testimony of Capt. Micajah Woods, page 121.)

PROOF THAT OTHER SIDE HAD KNOWLEDGE OF 1901 PROCEEDINGS DECLARING PLAINTIFF-IN-ERROR SANE AND COMPETENT.

Four Years Behind The Bars Of "Bloomingdale," Or The Bankruptcy Of Law In New York, By John Armstrong Chaloner (1906), Page 323. (Appendix, Page 1.)

To Trial Brief - 1912

REPLICATION.

We shall now take up seriatim the answer of said Thomas T. Sherman, to-wit: * * *

"Third.—The defendant denies that he has any knowledge or information sufficient to form a belief as to the allegation contained in paragraph III of said complaint, that the alleged order therein mentioned, if any such order was ever made, has never been vacated, reversed or in any particular modified, and upon information and belief the defendant denies each and every other allegation contained in said paragraph III of said complaint."

Said "paragraph III of said complaint," to-wit:

"III. That on or about November 6th, 1901, a petition was presented to the County Court of the aforesaid County of Albemarle, in the State of Virginia, praying for an investigation into plaintiff's sanity, with a view toward ascertaining whether a committee should be appointed of his person and estate, and the said Court, after hearing and considering the evidence, duly determined and adjudged the plaintiff to be of sound mind and capable of managing his person and estate, and made and caused to be entered in the office of the Clerk of said Court an order bearing date November 6, 1901, dismissing the said petition and adjudging

the plaintiff to be sane and competent to manage himself an his estate, and said order has never been vacated, reversed o in any particular modified."

In examining said third paragraph of said Sherman said answer we might premise by saying that we have befor had occasion to remark upon the lamentable untruthfulnes of said Sherman. Said Sherman in said Sherman's said thir paragraph is guilty of as gross an untruth as fat John Fal staff himself, concerning the men in buckram, which Princ Hal properly designated as a lie "gross as a mountain, open palpable."

Said Sherman's said gross untruth may be divided int two heads, to-wit: *Head One*: THE LIE INDIRECT *Head Two*: THE LIE DIRECT.

Head One. Upon information and belief said Chanle affirms that said Sherman is in such perfect touch with al that transpires concerning said Chanler or said Chanler' affairs, in the County of Albemarle, Virginia, aforesaid, tha it is a physical impossibility for such a necessarily—unde the circumstances—notorious proceedings as the vacating, re versing or modification in any particular of said Court orde concerning said Chanler's sanity and competency—*that it i a physical impossibility for such an order to be entered b the said Circuit Court of Albemarle County without sai Sherman's full knowledge thereof.*

Head Two. Said Sherman's penuriousness is the caus of the undoing of said Sherman. Said Sherman's penurious ness led said Sherman to mulct the estate of said Chanler o the sum of ten dollars for the purchase of a certain docu ment which condemns said Sherman. Had said Sherman no been so penurious said Sherman would not have furnished documentary proof of said Sherman's mendacity.

Said document to- wit: In a certified copy of the "Inven tory" filed by said Sherman appears—under date January 27th, 1902—the following item of expenditure, to-wit, page 15: "John B. Moon, Copy Court proceedings (November 6th 1901) and testimony. County of Albemarle, Virginia, $10.00." The Hon. John B. Moon is a practicing attorney in said Cir-

cuit (formerly County) Court of said County of Albemarle. Said Hon. John B. Moon is the former legal representative of said Sherman's predecessor, the late Prescott Hall Butler. As proof of which we cite from the appended certified copy of the Louisa County, Virginia, proceedings—page 298 of said brief (of Chaloner *vs.* Sherman) to-wit: "and shall pay to John B. Moon the sum of $250, being fee due said Moon and his associates for services rendered (when employed by said Prescott Hall Butler) in connection with the defense and protection of said Chanler's interests in this cause in which said Moon acted as Guardian *ad litem*."

In the face of the admission, upon said Sherman's part, of the possession of said damning document, said Sherman has the face to swear "upon information and belief" against the truth of "That on or about November 6th, 1901, a petition was presented to the County Court of the aforesaid County of Albemarle, in the State of Virginia, praying for an investigation into plaintiff's sanity, with a view toward ascertaining whether a committee should be appointed of his person and estate, and the said Court, after hearing and considering the evidence, duly determined and adjudged the plaintiff to be of sound mind and capable of managing his person and estate, and made and caused to be entered in the office of the Clerk of said Court an order, bearing date November 6, 1901, dismissing the said petition and adjudging the plaintiff to be sane and competent to manage himself and his estate." All of which allegations are positive and established facts, of record in the office of the County Clerk of said Albemarle County, Virginia, and fully set forth in said Court proceedings, which said Sherman admits in said Inventory having procured per said Hon. John B. Moon in the words aforesaid to-wit: "Copy Court proceedings and testimony, County of Albemarle, Virginia, $10.00." * * *

(Appendix, page 27): We confess our inability to explain or account for allegations of this nature, unless by the hypothesis that to a mind preoccupied with a certain view,

firmly held, it is often possible that the plainest evidence should be, so to speak, invisible.

For how otherwise can a supposedly reputable member of the bar of the City of New York—as said Sherman presumably is—how otherwise can a reputable lawyer fly in the face of facts so fearlessly as to convince the unprejudiced observer that said flyer in the face of facts must be either lacking in principle or lacking in reason. How otherwise can a supposedly reputable firm of New York City lawyers such as said Sherman's said attorneys—Evarts, Tracy & Sherman presumably is—support said Sherman's Icarian flight. The answer is not far to seek. Said Sherman, as well as said Sherman's said attorneys know upon the evidence, of the despairing nature of the defence said Sherman and said Sherman's said attorneys attempt to put up, that it is impossible for said Sherman to win said action in face of the law and the facts against said Sherman. *Said Sherman and said Sherman's said attorneys have therefore taken counsel of necessity and determined that since said Sherman cannot win by fair means said Sherman shall win by foul.* Said Sherman not being able to face the facts staring him in the face in said case *has determined to attempt to doctor the facts, to twist the facts, to outrage the facts at all and any cost.* With said end in view said Sherman and said Sherman's said attorneys do not—upon the face of the indisputable evidence furnished by said Sherman's scandalously malicious Answer—said Sherman and said Sherman's said attorneys *do not balk at perjury and subordination thereto.*

Said Sherman and said Sherman's said attorney do not fail to recognize a good thing when they see it. Said Sherman and said Sherman's said attorneys recognize that a million-dollar client—whether said client be a voluntary or involuntary client, so to speak, as said Chaloner is at present—said gentlemen recognize that a million-dollar-client does not knock at said firm's doors every day in the week, and that now that said gentlemen have said Chaloner in said gentlemen's legal clutches, where said gentlemen can bleed said Chaloner to the tune of thousand dollar fees without as much

as by your leave to said gentlemen's said enforced involuntary client, said Chaloner, said gentlemen are prepared to put up a bitter fight to retain possession of a bird whose eggs are of gold. * * *

(Appendix, page 40):

We now append a certified copy of the aforesaid Louisa County, Virginia, Proceedings.

Virginia: In Louisa Circuit Court, January 25th, 1902.

GEORGE W. MORRIS, TRUSTEE,
Against
J. A. CHALONER, AND OTHERS.

This cause came on this day to be heard in vacation, by consent of Counsel, in pursuance of the provision of the decree entered herein on the 20th day of Sptember, 1901; upon the papers formerly read and also upon the supplemental petition and application of P. H. Butler, former committee of J. A. Chanler, under order of the Supreme Court of the State and County of New York, filed at December Rules, 1901, together with the exhibit therewith, of the record of the proceedings had in the Supreme Court of the State of New York on the 19th of November, 1901, filed December 13th, 1901, from which it appears that the said P. H. Butler has been relieved and removed as Committee of J. A. Chaloner by the order of the said Supreme Court of New York for the County of New York, and that his powers as such Committee have ceased, which petitioner further prays that the application and petition filed by him at the September term, 1901, of this Court be discontinued and dismissed; also upon the transcript of the record of the proceedings had in the County Court of Albemarle County, Virginia, at its November term, 1901, in the matter of the petition of C. Ruffin Randolph, filed in said court under the provisions of Section 1698 of the Code of Virginia, alleging that said J. A. Chaloner,

a resident of Albemarle County, had been adjudged and confined as a lunatic in an asylum in New York, and that he was suspected of being insane, and praying said County Court to examine into his state of mind and determine whether a committee of his estate and person should be appointed and it appearing from said certified proceedings that said County Court of Albemarle, a court of record having jurisdiction in the premises, did by its order entered on the 6th day of November, 1901, adjudge and decree as follows: "the said court having heard and considered the evidence of the witnesses produced, both of medical men and other citizens; and having considered the several medical opinions filed touching said Chaloner's mentality and having examined the said J. A. Chaloner is of the opinion that said John Armstrong Chaloner, is a sane man, capable of taking care of his person and managing his estate, therefore the court doth adjudge that there is no occasion for the appointment of a committee of his person and estate; which said record of said County Court of Albemarle filed in this cause on 13th December, 1901, is duly certified and attested by the Clerk of said Court; and this court having read and considered the transcript of the proceedings of said County Court of Albemarle County, to which are attached copies of the evidence and exhibits adduced before said court which evidence and exhibits were duly filed in this cause on the 13th of December, 1901, and this cause was argued by counsel upon consideration thereof the court doth order that the petition and application of said P. H. Butler, Committee, as aforesaid, filed in this cause at September Term, 1901, of this court stand discontinued and dismissed for the reasons stated in his supplemental petition filed at December Rules, 1901, and the court doth further adjudge, order and decree, inasmuch as John Armstrong Chaloner has been adjudged and declared to be a sane man, capable of taking care of his person and estate, by the County Court of Albemarle County (of which County said J. A. Chaloner is a resident) that Micajah Woods, Attorney for John Armstrong Chaloner be, and hereby is authorized to withdraw from the papers of this cause the certificates of de-

posit of the Peoples National Bank of Charlottesville, Va., dated the 17th day of June, 1901, for the sum of $1,344.58, and collect the same less $148.21, which he shall redeposit to the credit of the cause, said deposit having been made by George Perkins, Trustee in this cause, and being the net surplus balance remaining on hand unexpended, from the proceeds of the sale of the Hawkwood Estate in this cause. Said Micajah Woods, Attorney as aforesaid, out of the proceeds of collection of said certificates of deposit, less the $148.21 aforesaid, shall settle any unpaid costs in this cause, and shall pay to John B. Moon the sum of $250, being fee due said Moon and his associates for services rendered in connection with the defense and protection of said Chaloner's interests in this cause in which said Moon acted as guardian *ad litem*, and he shall account to the said Chaloner for the residue of said certificate of deposit.

J. E. MASON.

January 25, 1902.

The foregoing decree is this 25th day of January, 1902, hereby certified to the Clerk of the Circuit Court of Louisa County, to be by him recorded as the law directs.

J. E. MASON,
Judge of the Circuit Court of Louisa County.

Virginia: In Louisa Circuit Court Clerk's Office, January 28th, 1902.

The foregoing Cacation decree was this day received in said office and entered of record according to law:

Teste:

W. R. GOODWIN,
Clerk.

State of Virginia,
Louisa County, ss:

I, Jesse J. Porter, Clerk of the Circuit Court of Louisa County in the State of Virginia, certify that said Court is a Court of Common Law, Chancery and Probate Jurisdic-

tion, having a clerk and seal, that the foregoing instrument in writing is an exemplified copy of a decree entered as of the 25th day of January, 1902, in the chancery cause of George W. Morris, Trustee, *vs.* J. A. Chaloner, in said Court then depending which was authenticated and duly proved agreeably to the laws of the State of Virginia, when the same was authenticated and proved.

In testimony whereof I hereunto set my hand and affix the impress of the seal of the said Court and County in office at Louisa, Virginia, this 24 day of January, A. D. 1905.

JESSE J. PORTER,

(Seal of Virginia). Clerk.

Virginia,

Louisa County, to-wit:

I, Daniel A. Grimsley, Judge of the Circuit Court of Louisa County, in the State of Virginia, the same being a Court of Record having Common Law, Chancery and Probate Jurisdiction, with a Clerk and Seal, do certify that Jesse J. Porter, who hath given the preceding certificates, is Clerk of said Court, that his signature thereto is genuine, and that his said attestation is in due form.

Given under my hand 24 day of January, 1905.

DANIEL A. GRIMSLEY,

Circuit Court Judge of Louisa County.

State of Virginia,

County of Louisa, ss:

I, Jesse J. Porter, Clerk of the Circuit Court of Louisa County, Virginia, do certify that the Hon. Daniel A. Grimsley, whose name appears subscribed to the foregoing certificate is the presiding Circuit Court Judge of said County of Louisa, duly commissioned and qualified and that his signature thereto is genuine.

Given under my hand and seal of said Court and County at Louisa, this 24 day of January, A. D. 1905.

JESSE J. PORTER,

Clerk.

Deposition 1908, Vol. I, pp. 274-281.

EXHIBIT B.

(To be read in connection with testimony of Plaintiff-in-error's connection with St. Margaret's Home, page 176.)

ST. MARGARET'S HOME, PLAINTIFF-IN-ERROR'S CONNECTION WITH.

From Appendix in Brief of Chaloner vs. Sherman, by John Armstrong Chaloner (1905), Page 211 of Appendix.

"Filed December 1, 1903.
"New York Supreme Court, County of New York.

"In the Matter of the Estate
of
"John Armstrong Chaloner,
An Incompetent Person.

INVENTORY

"containing a full and true statement and description of each article or item of personal property, other than money, of John Armstrong Chaloner, received by Thomas T. Sherman as Committee of his person and property, since his appointment, the value of each article or item, so far as such value is known, a list of such articles or items remaining in the hands of said committee, and a statement of money now in the hands of said committee."

* * * * * * * *

"Land and buildings in the Town of Red Hook, in the County of Duchess, in the State of New York, known as St. Margaret's Home. Value unknown.

(John Winthrop Chanler, the father of said John Armstrong Chaloner, died on October 19, 1877, leaving a will which was admitted to probate, by which he devised these lands and bequeathed other property as follows:

'Third. I give, devise and bequeath to my eldest son, John Armstrong Chanler, or in case he shall not survive me, then to my oldest surviving son, in fee, the land and buildings in the Town of Red Hook, Duchess County, New York, known as St. Margaret's Home, founded by the late Mrs. Margaret Armstrong Astor, wife of the late William B. Astor and grandmother of my late wife, Margaret A. Chanler, as a home for orphan children; and also the sum of fifty thousand dollars; with the wish and hope that the said premises and the income of said fund may be appropriated, used and applied by my said son in keeping up and supporting the said St. Margaret's Home as a memorial of my said wife and her said grandmother; the said premises having been devised and the said fund of fifty thousand dollars having been given by the late William B. Astor to my late wife for the said purposes, and having come to me under the will of my said wife.'

"As the committee is informed and believes, at the time of the death of his said father, the said John Armstrong Chanler was an infant, the said St. Margaret's Home had then been established and was existing as an unincorporated charity supported from the income of the said fund of $50,000 referred to in the will of said John Winthrop Chanler; on the death of said John Winthrop Chanler this fund was paid over to the guardian of said John Armstrong Chaloner; under an order of this court made after due presentation to said court, and in consideration by it of the facts in respect to the said fund, the guardian of said John Armstrong Chaloner applied all of the income of said fund of $50,000 received by such guardian to the support of said St. Margaret's Home; this fund and its increase afterwards came into the possession of said John Armstrong Chaloner after he had attained the age of twenty-one years and thereafter, until he became incompetent to manage his affairs. In each year he received the whole income of said fund of $50,000 and ap-

plied it yearly to the support of said St. Margaret's Home. Before he was so adjudged to be incompetent to manage his affairs he had *confused and mingled the said fund of* $50,000 *and its increase with his other property so that it was impossible now for the committee to set apart and fix any part of the property, real or personal, of said John Armstrong Chaloner to the extent of* $50,000, *or to any other amount as representing or being the said fund of* $50,000, *so set apart and bequeathed by the will of John Winthrop Chanler, or any part thereof, and it may hereafter be adjudged and determined that a trust exists chargeable against the real and personal property of said John Armstrong Chaloner in favor of said St. Margaret's Home to the extent of said fund of* $50,000, *and such accumulations and increase thereof as existed while the same was in the hands of the said John Armstrong Chaloner. Since the said John Armstrong Chaloner became incompetent his brother, Winthrop Chanler and Lewis Stuyvesant Chanler, have advanced for his account certain sums necessary to pay the expenses of the maintenance of said St. Margaret's Home. Part of the amount so advanced by them have been reimbursed to them by the committee, as will appear by his account, submitted herewith.*"

EXHIBIT C.

LETTER FROM STANFORD WHITE TO PRINCESS TROUBETZKOY, pp. 157-162.

(To be read in conjunction with Letter to Capt. Woods from Plaintiff-in-Error, July 3d, 1897. Vol. II, 1911 Deposition, pp. 228-260.)

Q. Mr. Chaloner I hand you a letter and an envelope and ask you to describe what it is?

A. It is a letter from Stanford White to the Princess Troubetzkoy; it is addressed to "Princess Troubetzkoy (in Stanford White's handwriting) Castle Hill, Cobham, *Mass.*" I wrote here in blue pencil when I got it, "Who's looney now? The idea of Cobham being in Massachusetts." On this letter, when I got it, or rather, later, I made notes in pencil, not interfering with the text. *I want to say that this letter is one string of lies;* it is undated, but the events which it describes show that it was probably written in the Spring of 1897; written before the summer of 1897, and it was written on the evidence—in order to fool the Princess Troubetzkoy, deceive her and make her think I was temporarily overworked and had fallen in friendly hands—and would come back to Cobham and resume everything as before; not a word about insanity whatever—*White having meanwhile, lured me to a madhouse cell.* I have made notes to the letter, on a typewritten copy of this letter, which elucidated it. The letter reads as follows:

"To the
Princess Troubetzkoy,
Castle Hill,
Cobham,
Mass."

"Sunday," No. 160 Fifth Ave.

"Dear Princess Troubetzkoy—Dear Princess—Dear Amelie.

I have been hoping to get down and see you—as it is so much easier and better to talk over matters than to write—but I have been so pressed that I have been unable to—and I was really ashamed that you should have had to write me—although I was very glad to receive your letter—Archie had given me instructions in accordance with your letter—As you know (I suppose) Archie had not been at all well for the last eight months—(See Note 1 below.) He was unable to go to Alida's wedding—(See Note 2 below) and left some very important matters in his business unattended to for too long a time—he had had a serious falling out with his partner Maxwell—(See Note 3 below) and the conjunction of all these things brought him on to New York in December very unfit—to attend to anything and with very serious matters to confront him—(See Note 4 below.) He worked day and night here for three weeks—and finally—as he hoped—disposed of all matters but left here in an exhausted frame of mind and body. I wrote him a letter sometime afterwards telling him how glad I was he had got out of town—(See Note 5 below) and counselling him to take a long rest—I received no answer to my letter for weeks—and finally telegraphed to Philip—his partner—to find out what was the matter and Philip and Gordon came up to see me that afternoon—they said that Archie had had a very severe attack of the grippe and that he was sometimes in an excited and sometimes in a depressed state of mind—(See Note 6 below)—that he refused to see anybody—or to attend to any business—or open or answer any letters (See Note 7 below)—and that they could do nothing with him, and were very much troubled about him—and feared for his mind if he continued in such a lonely state at

Cobham—sleeping and eating as little as he did—and refusing to see any doctor. (See Note 8 below).

I at once got hold of his own doctor—telegraphed him I was coming—(See Note 9 below)—and went to Merry Mills —where we found him in a very ill condition. (See Note 10 below).

The doctor thinks he must have had a slight congestion of the brain. (See Note 11 below). He soon however became very cheerful in our companionship and agreed to the wisdom of his coming to New York with us and putting himself under proper medical treatment—(See Note 12 below)—and resting here until he was well enough to go abroad—(See Note 13 below)—after he came here his health rapidly improved—but he agreed to follow the doctors' strict instructions—(See Note 14 below)—not to even think of ny affairs of any kind whether business or otherwise—(See Note 15 below)—until he had gone abroad and entirely recovered his health—not to see anybody or any letters—as he was unwilling to give any absolute power in his affairs to anyone but myself—I had to undertake—although cheerfully this responsibility—although his law partner Philip and his friend Gordon—practically attend to all his affairs. They are in conjunction with me. (See Note 16 below).

Gordon and myself are the only ones Archie has cared to see—but we have seen him constantly and I have been enabled quietly to find out about his affairs as far as past matters are concerned. I found however that it excited him so to go into any questions of the future—that I had to drop it entirely and so have to deal with past and present facts—(See Note 17 below)—and carry on all affairs until he takes them up again—(See Note 18 below)—to the best of my ability—on my own judgment and that of his law partner.

I find his affairs in a very complicated state and amongst other things that in the generosity of his heart he has thought of others, but very little of himself—(See Note 19 below)—I am hoping however soon to get matters in fair order—(See

Note 20 below)—and to have one more talk with him before he goes abroad—(See Note 21 below).

I shall hope very soon indeed to get down to see you—in the meantime pray give my kind regards to the Prince and your mother—and father and my very humble devotion to your sister—and yourself.

Faithfully yours,

STANFORD WHITE."

Note 1.—Totally false—the statement "Archie had not been at all well for the last eight months."

Note 2.—"He was unable to get to Alida's wedding."—A mere temporary indisposition, lasting only two or three days, and consisting specifically in being overworked and fatigued. I saw no doctor, took no medicine, because I needed neither; all I needed was rest, which I got by remaining in bed for two or three days. This incident is touched upon in my letter of July 3rd, 1897, to Capt. Micajah Woods.

Note 3.—"He had a serious falling out with his partner Maxwell," etc.—This falling out is thoroughly gone into and fully explained in my deposition.

Note 4.—"And the conjunction of all these things brought him on to New York in December very unfit—to attend to anything and with very serious matters to confront him." Absolute lie.

Note 5.—"I wrote him a letter some (time) afterwards telling him how glad I was that he had got out of town."—The insulting letter from White referred to in my letter of July, 1897, to Capt. Micajah Woods.

Note 6.—"They said that Archie had had a very severe attack of grippe and that he was sometimes in an excited and

sometimes in a depressed state of mind."—I had not even had a cold, let alone an attack of the grippe.

Note 7.—"That he had refused to see anybody—or to attend to any business—or open or answer any letters."—I had arranged my matters so that I took a rest of six weeks, and told my business associate in New York—Gordon aforesaid—not to bother me with letters during said period, but to let me rest, I knowing that if anything really of vital importance arose they should wire me.

Note 8.—"And that they could do nothing with him, and were very much troubled about him—and feared for his mind if he continued in such a lonely state at Cobham—sleeping and eating as little as he did—and refusing to see any doctor."—I was eating waffles three or four times a day. I saw no doctor because I needed none.

Note 9.—"I at once got hold of his own doctor—telegraphed him I was coming." False. He sent me no telegram.

Note 10.—"And went to Merry Mills—where he found him in a very ill condition." Utterly false.

Note 11.—"The doctor thinks he must have had a slight congestion of the brain." Rot.

Note 12.—"And agreed to the wisdom of his coming to New York with us and putting himself under proper medical treatment." Utterly false.

Note 13.—"And resting here until he was well enough to go abroad." Absolutely false. My business ventures needed my presence to achieve success.

Note 14.—"But he agreed to follow the doctor's strict instructions." The doctor never gave any instructions.

Note 15.—"Not to even think of any affairs of any kind whether business or otherwise—until he had gone abroad and entirely recovered his health not to see anybody or any letters." In a word, White says the doctor had the same idea of what rest meant that I had, proved by his statement, "not to see anybody or any letters." *In a word, I was on the previous page held insane practically for doing—of my own volition—viz., "refusing for some weeks to see anybody or any letters"—what the doctors now charge me money for telling me to do.*

Note 16.—"His law partner Philip and his friend Gordon—practically attend to all his affairs. They are in conjunction with me." I say for a long time I felt that Philip had been "got at" by White; now I hold the proof.

Note 17.—"I found, however, that it excited him so to go into any questions of the future—that I had to drop it entirely and so have to deal with past and present facts." Naturally, since I was in jail at White's hands and fighting to get out against White's determined efforts to keep me there.

Note 18.—"And carry on his affairs until he takes them up again himself—proving White did not hold me insane.

Note 19.—"I find his affairs in a very complicated state and amongst other things that in the generosity of his heart he has thought of others, but very little of himself." I thought more of myself than White did—on the evidence.

Note 20.—"I am hoping however soon to get matters in fair order and to have one more talk with him before he goes abroad." "I am hoping however soon to get matters in fair order"—proving that my affairs were fundamentally sound.

Note 21.—"And have one more talk with him before he goes abroad." To which I say, "Monumental lie!" On the evidence—within the lines of this epistle—*I had already given White a limited power of attorney and had already received my life sentence in "Bloomingdale," instead of going abroad, and was behind the bars for life.*

Deposition of 1911, Vol. II, Pages 221-223, 252-253.

EXHIBIT D.

EXAMINATION OF TESTIMONY OF DR. S. B. LYON, pp. 221-223, 252-253.

(To be read in conjunction with Commitment Papers. Vol. II, 1911. Brief, pp. 291-297.)

Before plunging into the dismal depths of the mephitic jungle of mendacity and ignorance, represented by the libelous allegations against me on the part of Messrs. Austin Flint, Senior, and Carlos F. MacDonald, let us linger a moment in the markedly less malodorous, but still gloomy penumbra thereto, in the shape of the allegations of Dr. Samuel B. Lyon, Medical Superintendent of "Bloomingdale."

Dr. Lyon's allegations may be divided into three heads. *First.*—Allegations which are demurrable. *Second.*—Allegations which are frivolous. *Third.*—Allegations which are false. I should like to say out of gratitude to Dr. Lyon for the aforesaid distinguished courtesy he showed me, that I lay the cause of the allegations which are false to the fact said allegations for the most part are based, not on his own knowledge, but upon reports of members of the "Bloomingdale Medical Staff." I never caught Dr. Lyon in a lie, I therefore give him the benefit of the doubt when he tells lies on the witness stand. Taking up now his said allegations under their said several heads. First. I shall quote from Dr. Lyon's examination on the stand.

Q. "Did you see him in regard to attending before this commission and jury to-day?"

A. "Yes, sir * * * he said he was physically unable to be present on account of a pain in his spine—like a buzz-

saw—and he also said his knee was affected—and he would be unable to come * * * He did not wish me to represent him but I should come in his place or say that he could not come on account of his infirmity."

Q. "Did that infirmity really exist or was it a delusion?"

A. "I think he has a pain in his spine, but I do not think it would incapacitate him from coming here. I think he felt some pain—he was sincere in that but it was not an incapacity that would prevent an ordinary person from going out * * * he has kept his bed for over three weeks at least" * * *

A. "He went out by himself an hour or so—then he ceased to go out because he was physically unable" * * *

Q. "You think he would be hurt or injured in any way by producing him here?"

A. "No, I do not think he would."

Q. "You think it is a delusion on the contrary, he would not be in any way injured if he were brought here?"

A. "He is a hypochondriac—a hypochondriac delusion; he gives very exaggerated meaning to his aches and pains which may not be serious at all. He thinks he cannot go out or get up on account of his pain, while we would probably go around and do our work with the same indisposition and it would not interfere with our attending to business."

Anybody but the Medical Superintendent of an Insane Asylum, instead of accusing a man of my record, in and out of "Bloomingdale" of pleading the "baby act" of being a hypochondriac, in other words, because his whole nervous system had become seriously affected from two years incessant strain, day and night, of the hideous surroundings of a madhouse, would have expressed surprise that I was able to preserve a portion of my physical health and the entire body of my mental health uninjured. Anybody but the Superintendent of a madhouse would have expected me to go stark staring mad long before that time was up. *Second.* We now come

to some frivolous allegations. On page 9 Dr. Lyon appears to object to my habit—mentioned in my aforesaid letter of July 3d, 1897, to Captain Micajah Woods,—of barring my door against wandering maniacs at night. The only two occasions, to my knowledge, that this was neglected, maniacs roamed into my cell after nightfall. On one occasion it was rather unpleasant. Happening to get up in the middle of the night during a severe storm, because the rain was coming in on me through the roof, I glanced around on hearing a shuffling noice, approaching me—I had turned up the light to see where the water which was dripping on me came from —saw a gigantic maniac, over six feet in height and weighing at a conservative estimate, over two hundred and twenty pounds, approaching me in his night shirt. I drove him out. The next frivolous allegation is as follows. Dr. Lyon says page 10; "He became very suspicious of his food; he thought that it was poisoned." It *was*—with ptomaines. It will be remembered that in my aforesaid letter to Captain Woods, July 3d, 1897, I charged that the food at "Bloomingdale" was one of three things; to-wit: *badly cooked*, adulterated or decayed. The reason I varied the stores at White Plains at which I bought bread was the simple one that one store was worse than the other, until frankly I had to import bread from New York. Dr. Lyon's frivolity on the stand continues on page 11.

Q. "What did he do in regard to preparing his case?"

A. "Since he has been with us he kept copious notes; manuscripts two or three inches in thickness; that manuscript shows up the conspiracy as he said, and when he went to our entertainment he would put his foot upon it and guard it; he would guard it carefully, but he claimed it contained his whole case." That is why I guarded it.

Q. "How about the newspapers?"

A. "He has got every newspaper he has received since he came to the "Bloomingdale" Asylum, in his room; on these he made notes with his pencil. How far he thinks they apply to himself I am unable to say, but he has kept them, the his-

tory of his case and the manuscript too." Dr. Lyon's last frivolity on the stand falls on page 15.

Q. "Did he show any homicidal mania?"

A. "He threatened to kill us—to kill me; he never made any attempt upon me; but that was in the early part of his stay." I threatened to kill the "Bloomingdale" medical staff by sending it all and sundry for long terms to jail, once I got out of his clutches.

* * * * * * * * *

252-253.

Let us now turn for a moment to the amusing affidavit of Dr. Samuel B. Lyon, page 11, dated April 27th, 1899. Any lawyer will see, and many a layman, there is absolutely nothing in this verbose declaration. It is *vox et praeterea nihil*.

Village of White Plains, }
County of Westchester, } ss.
State of New York, }

Samuel B. Lyon, being duly sworn, deposes and says that he is a physician, and is the medical superintendent of "Bloomingdale," White Plains, a hospital for the care and treatment of the insane, and has been such superintendent for the past eight years.

That he knows and is personally acquainted with John Armstrong Chanler, who is a patient in the above named hospital. That he believes that said John Armstrong Chanler to be insane and unable to manage himself or his affairs, and that the grounds of his belief are as follows: That since the patient's admission to Bloomingdale, he has had delusions that conspiracies existed against his life and happiness: he has passed his nights in watching, has often declared his belief in his own prominent talents as a lawyer, pugilist, poet, etc., that while really a very bright man naturally, he has now the delusion that his mental powers are almost supernatural, and that his personality has undergone a change and that he now has a very high mission to fulfill toward

the world. His disease appears to pursue the typical course of what is known as systematized delusional insanity, beginning with suspicions of persecution by enemies for a purpose and later developing expansive ideas of his own personality.

SAMUEL B. LYON.

Sworn to before me this 27th day of April, 1899.

LOUIS D. FERRISS.
Notary Public.
Westchester Co., New York.

It is beneath the notice of rebuttal. Now let us turn to the testimony of Mr. Winthrop Chanler before the jury, page 43, *ibid.*

Deposition of 1911, Vol. II, Pages 253-254.

EXHIBIT E.

TWO LINKS IN THE CHAIN OF EVIDENCE AGAINST HIMSELF SUPPLIED BY MR. WINTHROP ASTOR CHANLER, pp. 253-254.

(To be read in conjunction with Chapman, Elizabeth Chanler's Visit to Plaintiff-in-Error at "Bloomingdale." ~~Vol. II, 1911 Deposition, pp. 276-277.~~)

Mr. Winthrop Astor Chanler obligingly supplies two most valuable links in the chain against himself, and Mr. Lewis Stuyvesant Chanler, and Mr. Arthur Astor Carey, the three petitioners in the commitment of March 10th, 1897. It will be remembered that in my aforesaid letter to Captain Micajah Woods, of July 3rd, 1897, in which I rebutted the testimony in the said Commitment Papers, I described the unfriendly terms between all the members of my family and myself and the consequent estrangement. Second. It will be remembered that in the same letter I said that none of the three said petitioners had ever crossed the threshhold of my home in Virginia. If Mr. Winthrop Astor Chanler has not, who was the nearest in age to me, and associated in business with me, it is reasonable to infer that the other two had not, under the aforesaid circumstances of estrangement. To return to the said first link established by Mr. Winthrop Astor Chanler against himself and his brother Petitioners—the link proving estrangement. Page, 43, *ibid.*

Q. "Is John Armstrong Chanler, your brother, now married?"

A. "No."

Q. "Has he been married?"

A. "He has been married. Yes, sir."

Q. "And a divorce obtained?"

A. "Yes, sir, so I understand." "*So he understands*," eh! He is not on friendly enough, on sufficiently intimate terms with his own brother to know whether he is divorced or not, but has to put in the qualifying "So I understand." The above sworn statement is directly in line with my allegation in my aforesaid letter to Captain Micajah Woods, of July 3rd, 1897, that I was on bad terms with my family. Now as to the second link Mr. Winthrop Astor Chanler forges against himself, concerning "Never crossing the threshold of my home in Virginia."

Page 46, *ibid.* Q. "What next? Do you know anything of his other property, about the Virginia property?"

A. "I know very little about that. I know that he had it but I have never seen it."

Q. E. D. If he had never seen it, he had never crossed its threshold.

Deposition of 1911, Vol. II, Pages 254-257.

EXHIBIT F.

EXCERPT FROM LETTER TO FIRST NEW YORK CITY LAWYER APPROACHED, 254-257.

(To be read in conjunction with Correspondence of Plaintiff-in-Error with Geo. H. Barnes. Vol. II, 1911 Deposition, pp. 260-278, 477-484.

I shall close with an excerpt from a letter written by me March 26th, 1900, to the aforesaid first New York lawyer.

The Society of the New York Hospital.
White Plains, Westchester County, New York.
March 26th, 1900.

Confidential.

My Dear————: !

I have steadily protested to the doctors here against my detention, and warned them that I'd bring suit for extremely heavy damages against "The New York Hospital" if not against its board of directors, which numbers such august personages as Commodore Elbridge T. Gerry, the Hon. Cornelius N. Bliss, Prest. Frederick D. Tappen of the Gallatin National Bank and the President of the Union League Club: Banker Brown of Brown Bros. & Co., Wall Street, and last, but far from least, Ambassador Joseph Hodges Choate, of Evarts, Choate and Beaman.

Quite an array of "plutocrats," is it not?

Not satisfied with having me declared a dangerous maniac, my said two brothers bring a second action against me last April and have me declared by a jury, who never laid eyes on me, and a judge who don't know me from Adam,

"an incompetent person," and have a Committee appointed for my person and estate. Who do you suppose that "committee of my person and estate" is? No less a personage than Prescott Hall Butler: The law partner of Joseph Hodges Choate of this concern! Did you ever see a prettier bunco game? P. H. Butler quietly skins me to the tune of five thousand dollars per annum ($5,000), that's what I'm made to pay against my will, not counting extras.

Prescott Hall Butler quietly pulls my leg to the tune of five thousand dollars per annum, and hands it over to the till of the concern of which his law partner is director, (Governor) is the high-sounding title they give themselves. Prescott Hall Butler rakes off five thousand per annum from my annual stack of income chips and drops it into the "kitty" of the concern his partner is a director of, and of which his (P. H. Butler's) firm is the legal counsel. How is that for high? Is it rich enough for your sporting blood, or isn't it. Prescott Hall Butler would be a fool, would have no eye to business, did he not hold me here for life. At a low risk, I am good for twenty years yet. That means a cool hundred thousand, not counting extras. Those extras, by the way, are made out by the concern for which his firm is legal counsel, and of which he is the Auditor! It smells a bit like a "con" game to me.

On the evidence I will show that every doctor who has been under oath on me has perjured himself. On the evidence I will show that my said cousin and two said brothers have perjured themselves. On the evidence—documentary—in my possession and otherwise, I will show that I am not an incompetent person. On the evidence—documentary—in my possession and otherwise, I will show that I am not an "insane" person and that I have never done or said anything in the slightest—in the remotest degree—irrational. On the evidence, lastly, I will show that I have been the victim of the boldest and best plotted conspiracy since Catiline's. * * *

As you may infer from this letter, I mean war. No compromise with an institution, or State in the slightest remotest degree connected with this rascally conspiracy. I have

bided my time and I propose to reap now and suddenly the reward of my patience. I am in a position of the greatest possible peril. Through the present iniquitous laws of the State of New York I am an outlaw. Prescott Hall Butler may have me overpowered at any hour of the day or night he chooses, and shipped, drugged, to any point he desires. I am utterly at his mercy, and without defence in law. No negro slave was ever tighter shackled to serfdom than I am, and have been for three years. He and his gang know that I'll "blow the gaff." He and his gang know that my trial in open court means a special session of the Legislature at Albany (if not sitting at the time) demanded by an outraged, a terror-stricken public, to repeal laws by which any man or woman, happening to be within the bounds of the Empire State, can be haled to a madhouse cell for life without a hearing.

It is a duel to the death between me and the Society of the New York Hospital, and its allied Private Asylums—with which this State is honey-combed—and their allied "Medical Examiners in Lunacy," whom I'll prove on the evidence to be a gang of professional perjurers, a gang of "cappers," and "barkers," and "pullers-in" for Private Insane Asylums with which the Empire State is mined. I'll prove on the evidence that the State Board of Lunacy is a farce of the most criminal description. That it is little better than a ring—apparently—run for "boodle."

Knowing all that I have picked up from three years close detective-like observation, my trial in open court would mean an *exposé* second only to that of the Tweed ring. The most dangerous side to this affair is the fact that all the guilty parties are men of culture, learning, wealth or prominence. The rascals in my criminal drag-net are gilt-edged. The role I am called on by circumstances to play is not of my own choosing. It was—on the evidence—forced on me—down my very throat. I am pilloried before New York, first as a dangerous maniac, next as a damn fool. Between the devil and the deep sea, eh! The only way that I can prove

that I am neither dangerous nor silly is to show up the rascality which accused me of so being. I have no choice. My own proper self-respect will not admit of my skulking out of the side door of my cell on a compromise—by which—to cover up the family and wide spread social scandal my case will mean—were I to admit that I have been both insane and incompetent. My record of endurance and patience proves that I am prepared to take all risks, and suffer all the insults and indignities which lie between me and an honorable vindication. Liberty with a smirched name has no charms for me. I demand justice.

Deposition of 1911, Vol. II, Pages 224-245, 245-252, 520-528, 538-539.

EXHIBIT G.

EXAMINATION OF TESTIMONY OF DOCTORS FLINT AND MACDONALD, pp. 224-245, 245-252, 520-528, 538-539.

(To be read in conjunction with Commitment Papers. Vol. II, 1911 Deposition, pp. 291-297.)

In order to get a fair idea of the malicious mendacity and besotted ignorance displayed by the two quacks—for their conduct on the evidence is unworthy of any higher name—of the aforesaid quacks Austin Flint, Senior, and Carlos F. MacDonald, it is well, to refer to the aforesaid opinions of my Medical and Psychological experts in the brief, I should say in reference to these gentlemen that their records prove them to be scientists of the deepest learning and the highest moral character. Men whose lives are spent in the pursuit of the enlargement of the bounds of science, not in the pursuit of fees obtained by depriving a sane man of his liberty, property, and happiness.

We may now approach the shady mazes of mendacity and ignorance represented by the allegations of Messrs. Austin Flint, Senior, and Carlos F. MacDonald on June 12th, 1899. As Mr. Flint says practically nothing when on the stand beyond reaffirming and making his testimony the allegations of his colleague, Mr. MacDonald, it will be needless to mention his name further. As with Dr. S. B. Lyon, we may divide Mr. MacDonald's testimony into three heads. *First.* Allegations which are demurrable. *Second.* Those which are frivolous. *Third.* Those which are false.

In examining Mr. Carlos F. MacDonald's said testimony it will be necessary to begin wrong end to and first take up

the third head, or allegations which are false. For Mr. MacDonald, on the evidence, entered my cell for the first time on March 16th, 1898, with a lie on his lips. Mr. MacDonald says on page 20 "We informed Mr. Chanler who we were, and the purpose of our visit; that we were there to examine him as to his mental condition." As it afterwards developed Mr. MacDonald was hired by my brothers, Messrs. Winthrop Astor Chanler and Lewis Stuyvesant Chanler, the said petitioners and executors under my Father's will to witness against my sanity. Now the first question I put to Mr. MacDonald before I said anything else was "Do you represent anybody?" To which Mr. MacDonald promptly replied "No." He went on to say that a friend of mine (no relative of mine, whom he named) had asked him to drop in on me and see how I was getting on.

As I had nothing to conceal in any event, and as I like to believe people are telling me the truth rather than lying to me, I permitted Mr. MacDonald to examine me. An examination for the testing of one's sanity is about as searching a one as one can undergo. Nothing is foreign to that, from the action of the liver to the belief in the mortality or immortality of the soul. Being aware of the above fact, I at once proceeded to cover as much and as varied ground as possible. Happening on his second visit to me, April 9, 1898, to have breakfasted in bed, and happening to have breakfasted later, I was in a costume adapted for bed when Mr. MacDonald entered. As said costume was also adapted for an examination of the muscles and limbs and weight and general physical condition, I took advantage of it to further his physical examination of me. Commenting thereon Mr. MacDonld says, page 26, "There was no sign of want of muscular power to direct his movements, and no suggestion of paralysis about him." On Mr. MacDonald's first visit to me, we had not time to reach a physical examination. Upon his first visit I devoted most of the time to a description of my case and what led up to it. I, of course, touched on the family row which preceded the family conspiracy. It will

be noticed that Mr. MacDonald is totally silent as to any business difficulties with any members of my family as well as to the business motives which pointed to the advisability of their having themselves declared my heirs at law rather than trust to my will in that particular. It will be noticed also that Mr. MacDonald is totally silent upon the question of my past due note against the said United Industrial Company, in which a good portion of my brothers and sisters are financially interested, in particular the petitioner, Mr. Winthrop Astor Chanler, to the extent of fifty thousand dollars. It will be noticed also that Mr. MacDonald is totally silent upon the question of overhauling the books of my father's estate, of which the petitioners Messrs. Winthrop Astor Chanler and Lewis Stuyvesant Chanler, are executors, and Messrs. Henry Lewis Morris and Fordham Morris—the latter a "Governor" of "Bloomingdale"—the lawyers in their employ. I also condemned the present state of the lunacy laws in New York, as well as the Board of Governors of "Bloomingdale," falsely so called, for being behind a concern which was robbing me to the tune of five thousand two hundred dollars a year, not counting extras. Lastly I condemned the system of Private Insane Asylums honey-combing the Empire State, and the swarm of alleged "Medical Examiners in Lunacy" a hoard, for a large part, of medico-political quacks who on the strength of their "pull" with some powerful pot-house politician are enlisted in the ranks of the gang of licensed thugs who masquerade under the name of "Medical Examiners in Lunacy." I said that once my case got into court the doors of the first would be swung open by the strong hand of the law, and the mouths of the second shut by the same. Having rapidly gone over the why and wherefore of my present predicament, I next briefly touched on my examinations in what, for lack of a shorter term, I termed "Anti-hypnotic—subconscious—suggestion," which later I contracted into the term of "X-Faculty." I gave precisely the same account thereof to Mr. MacDonald as I did over two years later to Dr. H. C. Wood, aforesaid.

At about this stage in the investigation Mr. MacDonald was good enough to pay me rather a high compliment. It was to this effect. That I had unusual power of language. He expressed the wish, probably as it eventuated, to save himself and his companion Mr. Austin Flint, trouble—he expressed the wish that there was a short-hand writer there to take it down, "it was so good." In fact, he turned to Mr. Flint, who of course, was present whenever Mr. MacDonald was, on said occasions, and said in effect, "Don't you agree with me?" Mr. Flint promptly replied, "No. I consider Mr. Chanler's style redundant." I at once turned to Mr. Flint and said in effect, "You are entirely right; my speaking style is redundant; but that is done on purpose, and in order to 'rub in' my points. If what I said were to be reported, you would not find me redundant." As proof that I could be concise I went to my pile of manuscripts—so frequently alluded to by my visitors—and taking therefrom a sheet of paper read him its contents. No sooner had I done so than Mr. Flint lost his indifferent air, and rising hastily from his seat exclaimed: "That's good. Let me have a piece of paper, I'll copy that, it will make a good climax to an after dinner speech." I found him paper and he copied it. It was a rhymed couplet I had made a few days previous. It was entirely sporadic, the only one that I had done. I had always admired a rhymed couplet given in Jevon's Logic—the standard college text-book on logic—as an example of epigram, which I learned at Columbia University. Said couplet had stuck in my head for nearly twenty years, and I had humbly tried to emulate its work. I shall now quote from the said book, page 154. "It may happen occasionally that the conclusion of a syllogism is left unexpressed, and the enthymeme may then be said to belong to the Third Order. This occurs in the case of epigrams or other witty sayings, of which the very wit often consists in making an unexpressed truth apparent. Sir W. Hamilton gives as an example of this kind of enthymeme the celebrated epigram written by Porson, the English scholar upon a contemporary German scholar.

"The Germans in Greek are sadly to seek,
All save only Hermann, and Hermann's a German."

My rhymed couplet was entitled as follows:

Delenda est carthage: or The German Tongue must be reformed. Cf. Mark Twain,

The German style's atrocious. The German style's a stench.
Heine's the sole exception. And Heine wrote—in French.

Apparently upon the strength of that couplet Mr. Flint founded the following observation, for he volunteered it shortly after he had finished copying the couplet. It was to this effect. "Your family put you here because they were jealous of you." I let it pass, and yet Mr. MacDonald has the effrontery to put his colleague's words in my mouth, for he says, page 20, "He said * * * his relatives * * * were jealous of his great mental * * * superiority to theirs."

Now let us examine the allegations of Mr. MacDonald which fall under the second head, the head of frivolity. On page 21 he shows lamentable ignorance of a term familiar to every newspaper reader, which is that of "blue-pencilling," or "editing" "copy," I took while at "Bloomingdale" the following New York daily papers: "The World" "Sun," "Journal," "Herald" and "Tribune," I read those five papers through every day from the first page to the last, underscoring and commenting on—for my own satisfaction and to pass the time—notable passages therein,—either notably good or notably bad—and therefore laughingly said to the said Messrs. MacDonald and Flint, that I had "edited" them. This is sustained by said Dr. Lyon's statement aforesaid, page 11 "He has got every newspaper he has received since he came to "Bloomingdale" Asylum, in his room, on these he made notes with a pencil." Mr. MacDonald, in his ignorance, accuses me of claiming that I drew an editor's salary therefor, as Mr. MacDonald says, page 21: "He said he had edited these papers from day to day as published." Again what

could be more frivolous than to accuse a man of incompetency because he says he is accustomed to handling mental strain of all sorts? Mr. MacDonald says same page, "Also that he was an expert in mental strain and in mental impression, depression and exaltation, that was his exact language." In other words, when members of the "Bloomingdale" Medical Staff entered my cell I was first bored and therefore experienced mental "depression" to that extent, I thereupon put in motion my powers of mental "impression" and soon made it—as Dr. Lyon swears on the stand—so hot for the doctors that one and all gladly beat a retreat; whereupon out of relief at such riddance I experienced mental "exaltation." Nothing very extraordinary in that.

Again, what could be more frivolous than to accuse a man who had been in every State and Territory West of the Mississippi—except Texas and Indian Territory—who has lived with cow-boys in New Mexico and traveled with the late U. S. General Crook among the Apaches in Arizona, to accuse such a man of being off his base because he claims to be a good pistol shot? Or what could be more frivolous than to attack the reason of the same man because he says he is a good boxer; when any member of the New York Racquet and Tennis Club, whose memory goes back so far, who saw the bout at the old Racquet Court, 55 West 26th St., in either 1880 or 1881, between Messrs. Arthur Chambers and "Billy" Edwards—professionals—who saw the said bout at the late William R. Travers annual reception as President of the Club, saw said bout followed by one between myself and the instructors of boxing of the Club. The papers did not give my name but said "Professor O'Neil and pupil." The late Mr. Travers was far too acute a judge of sparring to allow anyone not expert with the gloves to jeopardize the success of one of his celebrated receptions. Lastly what could be more frivolous than to charge the same man with insanity because he claims to be able to play pyramid-pool, when, as the rosters of New York Clubs in 1897 will show he was a member of as many first class clubs—starting with Fifth Avenue and Central Park, and ending with

Gramercy Park as any other man in New York? Let us return now to one of Mr. MacDonald's choice sentences. (page 23 *ibid.*) "He talked so rapidly we were unable to follow him; he was exceedingly voluble—demonstrative, effusive and vociferous, and at times vulgar and profane, and talked in an excited way. His manner exhibited a marked state of morbid mental excitement." What's wrong about that under the circumstances? And what's the matter with this: "At the end of the conversation, which he terminated very abruptly, he said 'no more today'." Why not? And what's the matter with this? "He dismissed us politely after exacting from us a promise to return in the near future and finish the 'conversation'? "What's wrong about that? What's wrong about "finish the conversation?" Mr. MacDonald has just complained above because the conversation "terminated very abruptly." If so it must have been unfinished. If so what harm in proposing to finish it? Truly the mental processes of New York "Medical Examiners-in Lunacy" are weird. On the second visit Mr. MacDonald starts out with the following complaint, page 25: "Before leaving the room (for a few minutes) he handed each of us a morning paper "to read during his absence." The act of the commonest politeness appears to arouse wonder, suspicion and surprise in the dubious bosom of Mr. Carlos F. MacDonald.

Here is another of Mr. MacDonald's boomerangs. (page 25 *ibid.*)

"Subsequently he called our attention to the manuscript which was carefully tied with twine, and which he said he constantly kept in his possession day and night. He said that it contained a full statement of his case, that no one but himself knew its contents, and that he intended to read it on the witness stand when his case came up in court." The above sentence simply proclaims me a prophet; for that is what I am doing now—"reading it on the witness stand." Mr. MacDonald once more finds fault with my delivery. He says, page 25: "On returning * * * he at once began to talk in the same excited, effusive, and vociferous manner he displayed on our former visit, sometime shouting at the top of

his voice." This, I frankly admit, I did with malice prepense. Mr. MacDonald has a habit of yawning, and Mr. Flint of dropping off into a doze. Whenever Mr. MacDonald yawned I raised my voice. Whenever I saw the eyes of Mr. Austin Flint, Senior, wax heavy, and his head droop, I raised a shout, whereupon Mr. Flint invariably raised his head. In other words I raised my voice to keep my listeners awake. A criticism of my using the simile of a Leydon jay, page 26, when touching on the magnetic properties of the human body; and finding fault with my alluding to the fact that silver tarnishes, page 26, when carried on some people's person, shows almost more ignorance than frivolity on Mr. MacDonald's part. Regarding now his physical examination of me, already touched on, it will be noticed by physicians that the most important point in a physical examination for insanity—namely the normality of the eyes and their reaction to light—was found to be in my favor, for Mr. MacDonald says, page 26, "pupils normal * * * pupils remained equal in size and reacted to light." Medical men will also readily see that nothing material was cited against me by Dr. MacDonald in said examination. To laymen I will venture to say that there is not one in a hundred who could be put through the paces of a "physical examination for insanity" without falling by the wayside as regards black marks from the medical examiner, and possibly actually falling down. For the performances they make one go through are amazing. I shall briefly describe them to show how artificial, unnatural, and impossible they are. A candidate for a "certificate of lunacy" is requested by his masters therein—the said examining doctors—to stand up and then deliberately throw himself off his balance by putting his feet so close together, toes and heels touching, that one's equilibrium is menaced. He is then commanded to extend his arms to their fullest extent, hands outspread, palms upward, and close together. He is then ordered to open his mouth, put out his tongue and shut his eyes. If he does not fall down on the spot he is lucky. It is while in the above described preposterous position that the physical observation of the examiners is taken. It will be seen that

Mr. MacDonald says, page 26, "the pulse was 110; his hands cold and tremulous, pupils normal, tongue coated and tremulous. There was also a marked tremor of the labial muscles and of the eye-lids when the eyes were closed; the pupils remained equal in size and reacted to light. The knee reflexes were much diminished. There was no sign of the want of muscular power to direct his movements, and no suggestion of paralysis about him. He stated that he slept well and his bowels were regular, and that he was in perfect mental and physical health." Let any normal individual put himself in the aforesaid preposterous position, to-wit, toes and heels together until the equilibrium is threatened, arms extended to the fullest extent, hands outspread, palms outward and close together, mouth open, tongue out, and eyes shut, in the presence of an observant witness and see if the latter does not observe "hands tremulous," "tongue tremulous" and "also a marked tremor of the labial muscles, and of the eyelids when closed?" Said experimenter will find that so soon as he takes up the above tight-rope walking acrobatical position and succeeds in not instantly falling down, he will find that his witness will exclaim: "Your hands are trembling." The game is not to let the hands tremble. The experimenter puts promptly his whole power of concentration on his arms and hands and probably succeeds in overcoming the tremor natural from the unnatural rigidity and general preposterousness of said acrobatical attitude. No sooner has he succeeded there than his witness calls out: "But your tongue is tremulous." The game is not to have your tongue tremulous. The experimenter promptly puts his mind on his tongue and by heroic effort of will and physical force conquers the tremor in his extended tongue. "O but your labial muscles are tremulous," exclaims the witness. The game is not to have the labial muscles tremulous. Whereupon the experimenter concentrates his mind on his labial muscles and expels the tremor therefrom. "O, but your eyelids have a tremor," cries the witness. This tremor the experimenter may or may not be able to subdue. If, as was my case, the nervous system had been injured by long confinement in a madhouse cell, the

eyelids, under forced closure, as Dr. J. Madison Taylor observed, in his opinion, 18 months later, but *only under forced closure*, may be tremulous for some time to come. If, however, the experimenter has an entirely uninjured nervous system he may be able to subdue the perfectly natural—under the said unnatural circumstances—the perfectly natural tremor of the closed eyelids.

No sooner has he done so than the witness calls "O, but your hands are trembling again" or "Your lips are trembling again," or "Your tongue is trembling again." In other words, so soon as the mind is taken off of one set of muscles the natural trembling thereof, induced by the unnatural rigidity, physical and mental of the aforesaid acrobatical attitude at once sets up once more, and so on. The above shows how careful one should be in reading the report of a New York "Medical-Examiner-in Lunacy." For it will be noted that no mention whatever is made of the said acrobatical attitude which alone was able to set all these aforesaid tremolos in motion. One would think that my lips, tongue and eyelids twitched under ordinary circumstances which—as Dr. Taylor testifies—is not the case. Lastly the reason why my hands were cold is that the room was cold. That my pulse was 110 is not astonishing, seeing that some people have rather slow, others quick pulses, and mine happens to be one of the latter order; whose usual gait was hastened from the fact that I was engaged in a very exciting piece of work, to-wit, detailing *one of the greatest crimes ever done in the name of law, after having suffered under the said crime for more than a year, and with no prospect of relief for years to come.* To wind this up I might touch on the alleged "coated tongue." This is a falsehood on the part of Mr. MacDonald. For my tongue never is coated since I abandoned all forms of stimulant. I felt so sure of the cleanness of my tongue that so soon as I caught on to the farcical side of said "examination" I decided to have fun with it, and in effect said: "Now I demand a show-down of tongues. You have asked me to put my tongue out, and I'll bet that my tongue is as clean as any of yours." My proposition was accepted. Mr. Mac-

Donald was the first to enter the lists. He thrust out his tongue and I, holding a hand glass in my hand, to look out for my interests, put out mine. It was a dead heat, tongue and tongue. Neither had the slightest lead in clarity. Both were excellent. Mr. Austin Flint, Senior, was my next opponent. He slowly obtruded his tongue. Simultaneously one word burst from his rivals, Mr. MacDonald's, and my lips, "Coated." "No, sir, it's not coated," shouted Mr. Flint, "There may be a little beer on my tongue, but it's not coated." *So far from being a hypochondriac, Mr. MacDonald swears, page 27 that I stated that I "was in perfect mental and physical health."* We now turn to the last examination of me by Messrs. Flint and MacDonald, April 20, 1899. Upon this occasion the mendacity of these gentlemen ran neck and neck with their ignorance. . A close examination of the facts in the case will disclose a queer state of things. A close examination of the facts of the case will disclose a state of things as queer as queer can be. For on their previous visit a year or more before, they, so to speak, attack my veracity by quoting on top of their findings—alleged—against my health they quote against me, "he stated he was in perfect mental and physical health." In other words, they attack me for saying I am well. While on their later visits, a year or more later, they attack me for saying I am ill. Messrs. Flint and MacDonald are certainly hard to please. An examination of their testimony on this visit to me, namely, April 20, 1899, will disclose also the fact that Messrs. Flint and MacDonald lay claim to being wizards, mind-readers and the like; for contrary to the custom obtaining among all physicians above the level of mountebanks, Indian-Medicine Men, and Charlatans, they turn a deaf ear to the patient's suffering, and lightly brush his plea aside with the airy assurance of a quack, who pretends to witchcraft, and *bona fide* witchcraft at that, for nothing short of witchcraft could have formed a foundation for their knowledge—alleged—of my ailment. When after more than two years of the most excruciating mental torment, to which the human mind can be subjected, after two years of illegal and malicious confinement in a mad-

house cell, while my property was being mismanaged, and so injured, and my substance wasted by being diverted to the extent of over five thousand dollars per annum into the coffers of the New York Hospital, when after more than two years of this Hell-upon-earth for a lawyer who knows his rights and therefore knows that they are being outraged, it is small wonder that the nervous system begins to show signs of wear and tear. When after more than two years of this torture the victim thereof refrains from complaint thereof, refrains from the most distant allusion to his physical suffering and only touches thereon in reply to the cross-examination of Messrs. Flint and MacDonald, page 28, Mr. Macdonald swears, "He did not at first complain of any physical ailment, but in reply to questions he said that on April 14th, 1899, he was suddenly seized with a remarkable sensation in the spine, just above the sacrum." And again by the same, page 20, "He said nothing about his spinal trouble, except in answer to questions," is that the act of a molly-coddle, or hypochondriac, or liar? The spinal trouble was not thrust upon the said visitors for either sympathy or advice. Only having a regard for the truth—Dr. S. B. Lyon swears, page 15, "he (myself)—is a very honorable man" only having a regard for the truth, when asked point blank about my health I objected to lying and therefore reluctantly confessed the said spinal trouble. Whereupon Messrs, Flint and MacDonald tacitly claim the occult power sufficient to put them in possession of the—so to speak—facts hidden in the interior of my spine, and possibly knowable only to me. For they say, page 29, "We formed the opinion that he had no disease of the spine and the difficulty complained of is a delusion, probably temporary." "A delusion, probably temporary" is good. A show-down of the inside facts, concerning the above examination, is edifying. Mr. Flint arrived some half hour before Mr. MacDonald on this occasion, and it was he and not Mr. MacDonald who conducted it. It happened as follows: Upon cross-examination Mr. Flint drew out of me that I had trouble with my spine as follows: I said in effect: "The trouble with my spine has grown out

of my incarceration and the resultant strain on my nervou system. The spine is the trunk line of the nervous systen The nervous system begins in the brain and runs from ther through the body. Anything which excites or irritates th brain will in time, irritate and inflame, therefore portions o the nervous system. The nearest portion of the nervous sy tem to the brain is the spinal cord, therefore that is affecte inflamed and irritated, and I suffer thereby." Mr. Flint di me the honor to say that he thought mine a very probabl diagnosis, and asked me to get up for him to feel the ver tabrae of my spine. I did so. He pressed and pummelle the vertebrae with a will, beginning from the first to th last. He gave me a good deal of pain, but in order not t set the "Bloomingdale" doctors on my spine I controlled i and did not let him see how much he hurt, beyond saying "That hurts," or "That does not hurt so much," or "Tha hurts more." The said examination seemed to convince hi that I was correct in my aforesaid diagnosis, for, on Mr MacDonald's entrance shortly thereafter he said in effect "Mr. Chanler says," and then repeated almost word for wor my diagnosis aforesaid and then went on to say "I have ex amined him- spine—and I am inclined to agree with hi diagnosis." MacDonald then asked a few questions there anent, and expressed his concurrence in Mr. Flint' concurr d diagnosis. On top of that it does no look MacDonald to say under oath, page 2 "we d the opinion he had no disease of the spine an the difficulty complained of is a delusion, probably tem porary." Concerning the internal evidence of the truth o my above assertions Mr. MacDonald says, page 29, "A care ful examination of the spine revealed nothing." It reveale that it was attacked and that Mr. Austin Flint's manipula tion of the vertebrae gave me pain. Again, same page, Mr MacDonald says: "He was wearing a porous plaster whic he said gave him instant relief when he applied it." Now anybody who knows what a porous plaster is, knows that i is a blister—a counter-irritant. That it blisters or irritate the skin and sets up such an itching as to be almost unbea

able at times. Therefore it is axiomatic that nobody is going to wear a porous plaster for pleasure. On the other hand, the other side might say, "Ah, but that was put on for effect to impress the doctors." To which I reply: "Ah, but I did not touch upon it until they had dragged it out of me on cross-examination." From which fact the conclusion is inevitable that I was wearing a porous plaster to alleviate pain in my spine. On top of which Messrs. Flint and MacDonald airily stultify themselves by saying, "We formed the opinion he had no disease of the spine and the difficulty complained of is a delusion, probably temporary." A "delusion" which as practical a thing as a porous plaster, with the world of irritation and itching in its train, could not dispel. The admitted facts are sadly against Messrs. Flint and MacDonald's admitted opinion. Moreover on this interesting question of spinal-delusion, so to speak, Dr. S. B. Lyon is directly opposed in diagnosis to Messrs. Flint and MacDonald's alleged diagnosis. For they say as above, "We formed the opinion * * * the difficulty complained of is a delusion," while Dr. Lyon swears, page 7, in answer to the question "Did that infirmity (in the spine) really exist, or was it a delusion?" Answer. "I think he has a pain in his spine: * * * he has kept his bed for over three weeks at least." This begins to look like a case "When Doctors disagree." To resume. Any fair-minded man will readily admit that a man who has to have his ailments cross-examined out of him is not the man to lie abed for three weeks at a time? Messrs. Flint and MacDonald again show their ignorance by bringing forward, page 29, as evidence against spinal trouble the fact that "he got up and moved freely about the room." Any reputable physician knows that incipient spinal trouble does not *per se* interfere with free movement of the limbs. Mr. MacDonald again hurls his boomerang allegation, though this time it is a shorter one than usual. Page 29, "He received us on this occasion very cordially again, and was voluble, excited and vehement in his language the same as on the examination of March, 1898. He talked most freely and seemed to conceal nothing from us." The above is the thanks

I get for treating these two creatures like gentlemen, taking them at their word that they "represented nobody," and showing no distrust of them. To anyone who knows, the above sentence of theirs would not make a bad certificate of sanity itself. Let us dissect it, and see. *First.* Anybody experienced with lunatics knows that they are never cordial. They may be foolishly gay or savagely morose or between the two, dumb, but they are never deserving of the term "very cordial." They are too indifferent. Insanity makes its victims indifferent. *Second.* "He was voluble, excited, and vehement in his language." Could higher praise be given the advocate of redress for a gross crime? Could a finer description of a forensic manner be concisely conceived than "voluble, excited and vehement?" In other words the said advocate of justice was not tongue-tied, was not cursed with a scant vocabulary, "he was voluble." Furthermore he had what all advocates must have to stir their hearers, he had action. Demosthenes, the father of oratory, described oratory in one word: "Action." He had action, for he had movement; he was not asleep; he was "excited." Last, and fittingly last, for it formed the climax, he had fire, force, eloquence, he was "vehement." We search Mr. MacDonald's all unconscious eulogy for a discordant note, for a disparaging phrase, in vain. It holds nothing but praise. There is no hint of hesitancy, at a loss for a word, incoherence, irrelevance, vagueness, unintelligibleness, dragging in extraneous matter, and lastly irrationableness. All and sundry of which terms apply strikingly—to one who knows—to the language of *bona fide* lunatics. Lastly one of the most prominent ear-marks of insanity is suspicion, and a lack of frankness. What do we find in its place in Mr. MacDonald's extravagant eulogy aforesaid? Why, its exact opposite, page 29, "He talked most freely, and seemed to conceal nothing from us." And this too after a year had elapsed between visits. Surely a striking case of lack of suspicion. Surely a case of confidingness almost Angelic, surely a case of "thinking no evil" almost Apostolic, on the part of the alleged lunatic. We next had a rattling lie from Mr. MacDonald's lips. He says, page 29: "His

abnormal mental condition is markedly intensified since our first examination." Now let us see what in the shape of proof he brings forward to support his lie. His first attempted support of his first lie in this series of lies is a lie bigger than its predecessor. For Mr. MacDonald says, page 29: "He fully believes, as he expressed it, that he is a reincarnation of Napoleon Bonaparte." That is an outrageous lie—an abominable piece of perjury; as shall be shown presently. On page 30 Mr. MacDonald says, "At our own suggestion he went into a trance." Then a little further on "He went into a trance and gave us a representation of the death-scene of Napoleon, looking into a hand-mirror and lying on his back." Mr. MacDonald also says in his affidavit, page 7, dated May 5th, 1899, "He has told deponent that he was Napoleon only when in a trance." Now there is where Mr. MacDonald falls down. I wished to have a little fun with Mr. MacDonald and Mr. Flint, so I set a trap for them into which both fell head first. It was as follows: I said: "I boldly say that I am the reincarnation of Napoleon Bonaparte." It was as good as a play to one interested in watching the facial play of human emotions, it was as good as a play to watch the doctors. Mr. MacDonald's feline features and cold blue eye lit up with expectant triumph. In Mr. Austin Flint, Senior, expectancy of triumph took on a heavier but less pronounced a form. Mr. Flint's heavy features took on an unwonted animation and his somnolent eye lit up with the flame of anticipation. So soon as I had mentally checked off the above facial expressions carefully, so as to be able to describe them truthfully in my brief, when occasion served, I instantly threw their hopes to the ground.

I instantly added to my above remark: "But I only say so when in a trance." The effect was instantaneous. Mr. MacDonald collapsed and fairly wriggled with chagrin, and he blurted out the damaging—"You can't catch him!" The effect on Mr. Flint was shown by his sagging back into his seat with a grunt of disgust. They evidently, from their disappointment, showed that they thoroughly realized the innocuousness of my apparently bold declaration qualified.

They evidently knew that no man is mentally, morally, or legally responsible for what he says in his sleep. Therefore they deliberately, craftily transpose the position of the qualifying word "only" and instead of putting it where it belonged in my sentence, move it to a point where it takes on an entirely different meaning. Now let us examine another "support" for Mr. MacDonald's said falsehood. (Page 29 *ibid.*) "His abnormal mental condition was intensified since our first examination. Page 29 *ibid* says, "He recited to us seven or eight sonnets of his own composition." Now it should be remembered that the author of the above sonnets was on trial on the charge of incompetency. To any person of the slightest cultivation a sonnet is not a thing to be sneezed at. Leaving aside the question of matter the form alone is the most difficult of all known forms of versification. A person who can write a sonnet is therefore a person capable of doing a thing in itself difficult. A person who can do a thing in itself difficult is therefore not an incompetent, for he is capable, or competent to do, a difficult thing. Whereas an incompetent person is, as the name implies, incapable, incompetent, to do a difficult thing. Now let us examine the matter of the said seven or eight sonnets, is the only thing commendable about them their complicated, and therefore difficult, procrustean form? On the contrary, Mr. MacDonald gives the said seven or eight sonnets extraordinarily high praise. Is there anything mediocre, commonplace, or trite about the said seven or eight sonnets? On the contrary, here are the words of Mr. Macdonald thereon, page 30 (*ibid.*) "These sonnets were certainly of a most extraordinary nature, and "very brilliant" "in a way." In other words said seven or eight sonnets must perforce have been at least original and bright, for they are admitted by Mr. MacDonald to be, "Most extraordinary" and "very brilliant." If anybody thinks it is an easy thing, a thing that an incompetent person can achieve, to write sonnets which his very opponent admits are "most extraordinary" and "very brilliant" let him try it. At all events it looks queer to offer such an allegation, as the above, as evidence in sup-

port of Mr. MacDonald's said falsehood "His abnormal mental condition was intensified since our first examination."

Now let us see what is the next falsehood Mr. MacDonald brings forward. On page 29 *ibid*, he says, "He recited to us seven or eight sonnets of his own composition, saying that he had suddenly become the greatest poet in the world's history, except only Shakespeare." This is a flagrant falsehood. What I did say was that I had a greater command over the Shakespearean form of sonnet than any one but Shakespeare, implying of course anyone that I knew of. So far as my knowledge at the time went I knew of nobody of importance who had used his form of sonnet but Shakespeare, all invariably employing the Italian form.

To wind up this question of sonnets it is necessary to reopen it, bearing in mind that I did not introduce the topic. Mr. MacDonald introduced it, on the witness stand. On Messrs. Flint and MacDonald's said last visit to me April 20, 1899, I said in effect "I struck a vein of rhyme shortly after your last visit. You remember the rhymed couplet which you copied for a climax. Well, I have done in round numbers one thousand of them, counting here and there a triplet or a quatrain. I have done one thousand rhymed couplets since we last met besides thirty sonnets. The couplets were training for the sonnets. I did one of the latter in August, 1898, when I had been doing couplets for some months. My first couplets—as the one you copied—were not classic in form; they were never less than ten or eleven syllables in length, but they were frequently more. After doing couplets for several months I began to shorten them to the classic form. When I had been doing this for a month or more I suddenly found myself writing, for the first time in my life, and much to my surprise, a sonnet. Shortly thereafter I abandoned the couplet-writing and confined myself exclusively to sonnets, and with a few exceptions, to the Shakespearean form of sonnet; it suits my wants better as it's the strongest form of sonnet." I then went on to say in effect: "The couplet you copied is a fair sample of the rest." In conclusion I might say that since that date I have done

over three hundred and sixty sonnets, making a total of four hundred sonnets in all. I might add that Mr. Flint was quite pleased with the sonnets. He urged me to let him have them. 'To publish anonymously in some New York paper', he urged. I said, "Get me out of here and I'll let you publish the sonnets." To which he replied "Let me publish them and *they* will get you out." Mr. MacDonald's last falsehood in this series was on page 30, *ibid*, where he said that I had "arranged his bed to resemble the bed on which Napoleon Bonaparte was said to have died." The authorities furnished the beds and their furniture, and therefore any such resemblance was not of my choosing. Third. All the other allegations of Mr. Carlos F. MacDonald, which are material and hostile, are false.

As has been said, Mr. Austin Flint, Senior, brings no new matter to the fore. The only remark approaching it, is where he says in his affidavit said to have been approved by him, but not sworn to owing to illness, is alleged to-wit: page 7, *ibid*, "He went into a trance at the request of Dr. MacDonald, and gave the most vivid illustration of the death of Napoleon." And a few lines lower, *ibid*, "Deponent further says that the foregoing are a few instances of a most violent and tragic talk with the said John Armstrong Chanler, which lasted as aforesaid, over an hour, and that the said talk was accompanied with denunciations of vile conspiracies against him." It is a relief to me to be able to say that Dr. Austin Flint spoke the truth in above allegations.

As a student of science—as a student of Psychology—I blush for her. As a student of science I blush to see my brother Scientists, Messrs. Samuel B. Lyon, Carlos F. MacDonald, and Austin Flint, Senior, pilloried so painfully by their own preposterous opinions of my sanity. I blush to see my brother Scientists aforesaid pilloried before the world as quacks, on the strength of their own absurd opinions. I shall quote without comment from the sworn opinions of Messrs. Lyon, MacDonald, and Flint aforesaid.

Dr. S. B. Lyon, on the stand, page 12, (*ibid*).

Q. "What is the nature of his disease?"

A. "It is sometimes called systematized delusional insanity, a short name for it is paranoia."

Q. "Is the disease progressive?"

A. "The disease is progressive." Page 13, *ibid.*

Q. "In your opinion, Doctor, is it curable, or incurable?"

A. "Incurable."

Q. "In your judgment is Mr. Chanler competent to take care of himself or his affairs?"

A. "He is not." Page 14, (*ibid*).

Q. "The description you have given applies to the whole period within the first two years?"

A. "Yes, sir, there was never a time when this condition of mind has been absent; there never was a time when he was lucid as I understand lucid intervals." Page 30, *ibid.*

Dr. Carlos F. MacDonald on the stand.

Q. "In your opinion, Doctor, is he now of unsound mind?"

A. "Yes, sir."

Q. "Is he capable of attending to his person or estate—his affairs?"

A. "Absolutely not." Page 31, *ibid.*

Q. "This opinion is formed of your observation?"

A. "Yes, sir."

Q. "And it is independent of what was told you?"

A. "Yes, sir. It is confirmed, of course, there is no shadow of doubt in my mind, and I think in the experience—any experienced examiner in lunacy would reach that conclusion without any history of the case whatever" * * *

A. "Yes, sir; and it presents all the ear marks of typical paranoia. In the physical and mental condition there is no symptom lacking to make it a perfectly typical case of paranoia. If one wanted a case for (page 32, *ibid*) teaching or describing a case in a text-book, you could not de-

scribe it more graphically than simply taking his case as it presents itself. It is the most striking case of paranoia that I have ever seen in my life." Page 28, *ibid.* I should say that Mr. Chanler is the most typical classical case of paranoia that I have ever seen. I have seen thousands of them." Affidavit May 5th, 1899, of Dr. Carlos F. MacDonald, page 8 *ibid.* "Deponent further says * * * that the said Chanler is now, in his opinion, a hopeless paranoic, his mental disorder being incurable and progressive." Dr. Austin Flint, Senior, on the stand. Page 34 *ibid.*

Q. "And from what form of insanity is he now suffering?"

A. "He is a typical case of what is known as paranoia, or chronic delusional insanity."

Q. "In your opinion, Doctor, is that progressive and incurable?"

A. "It is incurable and progressive and will finally terminate in dementia. If I may be allowed to say those cases frequently live for a very much longer time, quite different from paresis."

Q. "In your judgment, is Mr. Chanler now capable of taking care of his estate and person?"

A. "No, sir, he is not." Page 35, *ibid.*

Q. "Is his physical condition all outlined with that form (paranoia)?"

A. "Nothing could be more typical of that form of disease; it is an absolutely typical case (of paranoia) from every point of view."

Now let us see how far the above sweeping allegations that I am in a word, a hopeless and increasingly hopeless case of incompetency, let us see how far the facts bear out the above sworn statement of Messrs. Lyon, Flint and MacDonald.

In the first place, it should be borne in mind that in the said letter of July 3rd, 1897, to Captain Micajah Woods was written during my incarceration and therefore during the alleged incompetency. I do not think I am rash when I say that I am willing to leave it to any fair-minded man to

decide whether said letter could have been written by an incompetent. In the second place I am willing to leave it to any fair-minded man of cultivation to decide whether an incompetent person could have written sonnets which are admittedly "of a most extraordinary nature and very brilliant." How could an incompetent do "brilliant" work? To further the above test I shall show four of the said seven or eight sonnets I recited to Messrs. Flint and MacDonald. In order that the said cultivated observer may not say that he is not an expert in judging sonnets, and is therefore unequal to the task, I shall bring forward a gauge by which any person of ordinary parts and ordinary cultivation may judge said sonnets; together with the best test as to the merit of any given rhyme that I know of, in all literature. With these two mechanical guides, so to speak, no person not below mediocrity, can go astray in testing the said four sonnets. The standard gauge for the sonnet is taken from Gummere's "Handbook of Poetics," pp. 239-241 (The Shakespearian form of sonnets) "is sustained without break until it reaches a point at which a personal appropriation needs to be made. That is we have the symbol and then—mostly in the concluding couplet—the application. The excellence of Shakespeare's sonnet as critics esteem it, is the climax to which it rises by means of the closing couplet."

The said test of the merits of rhyme is taken from the life of Voltaire (by John Morley) page 131. (The Requirements of Rhyme) "We insist," said Voltaire, "that the rhyme shall cost nothing to the idea; that it shall neither be trivial nor too far-fetched; we exact rigorously in a verse the same purity, the same precision, as in prose. We do not permit the smallest license; we require an author to carry without a break all these chains, and yet he should appear ever free."

"ROLL-CALL."

When I call o'er the roll-call of my wrongs,
The black folly with which my foes me charge,
How I am pilloried 'fore gaping throngs,
The puerile littleness of life bulks large.

The Thieves and villains who hold me in thrall,
The quacks and perjurers who put me here,
The wicked laws of this great State, and all
The Law's dread enginry the poor so fear,
Force Hope-in-Man her breath to sudden catch,
Force Hope-in-Man to feel her time hath come,
And bid her swift prepare to lift the latch
Which opes the grimy portal to the tomb.
Hope in a thing that's grimmer yet than death.
Death's Master—Destiny—holds firm my breath.

"IN THE TRENCHES."

I look with pleasure toward a brighter day.
Not one beyond the stars—tho' that may come—
But one wherein my hand I'll get in play,
The hand that modestly doth push the plumb
Wherewith I write these records in my cell.
Then let the thief his guarded millions watch.
Then let the cut-throats in high places tell
Their creatures to be wary and to snatch
Their other victims out of sight—away
From where the Law's long arm will sudden come
Once I have got to Court and had my say
Once Law hath rescued me from this foul tomb.
Till then my lawyers strong will toil amain
Until the links they break of this Hell-chain.

"AN AFFAIR OF OUTPOSTS."

Within this cell I for my life have fought—
Wrest'ld and struggl'd for it hand to hand.
My keepers fingers round my throat were caught,
With deadly hate he pressed my strong weasand.
But fighting for my life's not new to me;
For life and property I'd 'fore then strove,
Fought strength with strength, and skill with strategy;
By both combined his fingers were unrove.

A strong, cat-like, six-foot Hibernian,
At near two hundred pound he tipt the scale—
Loving Whiskey better than Falernian—
And in a fight he ne'er was known to quail,
By fortune and by strength I won the day,
Now knows he well that choking me "don't pay."

"There's a divinity which shapes our ends,
Rough hew them how we will."—*Shakespeare.*

The cold iron curb of circumstance,
That hand of the Unseen in earth's affairs,
That grim Correctioner called chance or mischance,
Moveth by stealth and striketh unawares.
By stealth it moves and strikes at King and clown,
By stealth it moves and strikes to heal or kill,
Here stealthily it topples kingdoms down,
There stealthily it soothes a poor man's ill.
It makes or mars the hope of rich or poor,
None are too mean to come within its scope.
Here on ambition it doth close the door,
There to ambition it the door doth ope.
Blind chance it verily doth mean to men,
Keen chance it seems to him within its ken.

In conclusion I might say that the author of the above sonnets comes by his taste for verse legitimately; as his Grand-Aunt is the renowned author of "The Battle Hymn of the Republic"—Mrs. Julia Ward Howe. In the third place this hopeless and increasingly hopeless incompetent who Messrs. Lyon, Flint and MacDonald swore was unable to look after himself or his affairs, proved the falsity of the said charge in two ways. First. So soon as he began to recover from the illness brought on by the trouble aforesaid with his spine, that is to say four months later in August, 1899, he began to put himself in training for longish distance walks. After the long, close confinement in a cell, it was not until the following winter of 1900, that he was able to

make twelve miles in three hours, which speed was necessary to enable him to get to the post-office he employed for his secret mail and get back in time for supper and locking-up. By this means he was able to carry on a secret correspondence with friends on the outside while he was known at the said post-office under a false name. The said correspondence is given with his reasons for waiting so long before escaping in the Statement of Facts aforesaid in this brief. So soon as he decided to escape he did so, and did so successfully. So soon as he left "Bloomingdale" he changed his *alias* and employed said *alias* in telegraphing to Dr. J. Madison Taylor from New York City the afternoon of his escape. Under said *alias* he lay hid in Philadelphia from November, 1900, to June, 1901, baffling the efforts of the police and detective forces of New York and all the large cities of the country, a general alarm having been sent out a few days after his escape from "Bloomingdale."

After about six weeks with Dr. Darlington at Concordville, Pa., I then left for Lynchburg, Virginia. On leaving the boundaries of Pennsylvania while on the train, I sent a wire to my counsel in Lynchburg, signed by my third and last *Alias*, the one I intended to live under during the next few months at Lynchburg in the Arlington Hotel of that city. This *alias* successfully shrouded my indentity as had its two predecessors, and I had no difficulty in moving freely in public under it. Here therefore is the record of a fugitive from the police of the entire country, while the press is ringing with his escape, and description, and finally reported death. Of a fugitive from the police who has successfully baffled them in three different States, where he operated under three different *aliases;* until it suited his convenience to, so to speak, rise from the dead as the papers said. Does this look like hopeless and increasing incompetency and inability to take care of himself and his affairs? *Second.* If, as Messrs. Lyon, Flint, and MacDonald allege, I was increasingly incompetent, increasingly insane, there would undoubtedly be signs, as time rolled by, of an increase in my incompetency and insanity. Let us look at the facts.

A year and a half after they have pronounced me hopelessly and increasingly insane and incompetent, the aforesaid cross-examination of me by Dr. H. C. Wood in Philadelphia took place. Could anything be saner than my answers to Dr. Wood's searching and profound cross questioning? Could any more positive denial, than that constitutes, be given to the perjurious statements of Messrs. MacDonald and Flint that I consider myself the reincarnation of Napoleon Bonaparte? So soon as I get with honest scientists the "X-Faculty" aforesaid clears up all the nefarious poppy-cock falsely sworn to by dishonest quacks. In the fourth and last place the charge of hopeless, and increasing incompetency is disproved by two things. *First.* No sooner had I reached my home "The Merry Mills," Cobham, Albemarle County, Virginia, than my friends of ten years standing or longer, flocked to the Court to the number of over a score to swear that I was the same man they had always known and that they had never seen or heard my sanity questioned. *Second.* It is generally supposed by people familiar with this merry world that a certain amount of money is a prerequisite to happiness and comfort, and that a man who can get on without it, who can "live by his wits" is nobody's fool, and is the last man for a man to mount the stand and swear is an incompetent person, an increasingly hopeless incompetent person, who can neither take care of himself or his property. Well, that is what I have been doing for the past year, living by my wits. For with the exception of a few paltry hundred dollars saved from the clutches of my falsely alleged "Committee" by the said proceedings at Louisa, Virginia, I *have not received a dollar during the past year that was not won by my wits—that is to say borrowed without security by me.* Said affidavit was written in 1900, October, I said nothing about my work on my law case. I say nothing about my briefing the above facts in rebuttal with no more help from my learned legal colleagues, my associate counsel, than I had from them in briefing the facts in rebuttal to the Commitment Paper's allegations in my said letter to Captain Micajah Woods, July 3rd, 1897.

Page 245-252, *ibid.*

Let us now peruse the allegations of Messrs. Lyon, Macdonald and Flint, relative to my ability to be present at the proceedings in New York, June 12th, 1899. In order to get the true inwardness of said allegations I shall give the testimony of Messrs. Lyon, MacDonald and Flint, *verbatim*.

DR. SAMUEL B. LYON, having been previously sworn, is recalled by Dr. Fitch. (~~Page 50, *ibid*~~).

By Mr. Candler:

Q. "Doctor, will you be kind enough to state whether in your judgment, in view of the desire of John Armstrong Chanler, not to come before this Commission and Jury that it will do him an injury to bring him down here against his will?

A. "I think he would be. I think he would be very much incensed and get excited; I think it would be an injury to him. When I said that he was physically able to come down I meant if he wanted to come, but not forcibly—not to bring him down forcibly.

Q. "You think it would exhaust him to bring him down here before these commissioners and jurors?

A. "Yes, sir."

By Com. Fitch:

Q. "You think it would be an injury to him to bring him down here? On your former testimony you said it would be no injury?"

A. "It would be no injury."

Q. "Now you are willing to say it would do him harm and injury if he were brought down here before this Commission and the jury?"

A. "I don't want my testimony to be contradictory. I think his illness is hypochondriacal. He has the physical strength to come down, but I think he would be excited and disturbed by it and it would make him uncomfortable.

Q. "Do you not think it would do him harm physically and mentally?"

A. "Yes, sir."

Q. "And do him an injury?"

A. "Yes, sir."

Q. "Not permanently, but temporarily?"

A. "Yes, sir." "He is a man that don't bear opposition; he becomes excited—he does not brook opposition."

By a Juror:

Q. "Would you have to use force to bring him here?"

A. "It would just depend; it would depend upon how he took it; he said he did not want to come down."

DR. CARLOS F. MACDONALD, having been previously sworn, is recalled by Dr. Fitch.

Q. "Will you be kind enough, Doctor, to state your views in regard to the effect upon Mr. John Armstrong Chanler, to bring him down here, in view of the statement which he made to Dr. Lyon in reference to his preference not to come?"

A. "I think it would excite him very much; in a way that it would tend to aggravate his mental condition. He is physically able to come down here, but it would unduly excite him; it would undoubtedly excite him very much and exhaust him as it did when we examined him. He was completely exhausted at the examination—after we examined him."

Q. "You think it would be unwise to bring him down here—you think he ought to be brought here?"

A. "I should judge not, unless there is a question for the jury; if they have any question about his mental condition, or if the commissioners have a desire to have him produced here, then, of course, he might be brought here."

By Mr. Fitch:

"I think you have covered the ground. We wanted to have some reason why he has not appeared at this inquest, and if you say it would be an injury to him and unduly excite him to bring him, unless the commission found it necessary, that is sufficient."

Witness:

"In my judgment it would aggravate his mental condition and in that way injure him, and would subject him to great excitement—get him unduly excited.

DR. AUSTIN FLINT, having been previously sworn, is recalled.

By Mr. Candler:

Q. "Dr. Flint, what have you to say on the subject in regard to bringing Mr. Chanler here under the circumstances mentioned?"

A. "From my examination of Mr. Chanler, although I quite agree with Dr. Fitch, with the general principle that the alleged lunatic should always be produced if physically able to come, it seems to me that this case is so plain and distinct that it is practically unnecessary; and if it should be necessary to use force to bring him down here against his will, I think it would be detrimental to him. Those are my views, although I quite agree with the practice that a lunatic ought to be produced in court if he can."

It will be remembered that Dr. Lyon testified page 7 (*ibid*), "I asked him if he wanted to be present here; he said he was physically unable to be present on account of pain in his spine. * * * He did not want me to represent him, but I should come in his place or say that he could not come on account of his infirmity."

Q. "Did that infirmity really exist, or was it a delusion?"

A. "I think he has a pain in his spine, but I do not think it would incapicitate him from coming here. I think

e felt some pain—he was sincere in that, but it was not
n incapacity that would prevent an ordinary person from
oing out; he did not feel as if he could stand up; he has
ept his bed for over three weeks at least." Does that look
ke an imaginary ailment which can keep a man who later
alks twelve miles in three hours, week in and week out in
ow and ice, in rain and August suns, which can keep such
man in bed for three weeks? Does that look like the act
a hypochondriac? It will be remembered that I was in
ress of imprisonment, that Dr. Lyon's say-so always went,
at what I said was a "delusion."

Again, page 16, *ibid*,

Q. "You think he would be hurt or injured in any way
producing him here?"

Dr. Lyon):

A. "No, I do not think he would."

Now why does Dr. Lyon say, page 8, *ibid*, "I think he
s a pain in his spine, but I do not think it would inca-
citate him from coming here." Why does he say that he
es "not think it would incapacitate" me "from coming
re?" In order to allow the proceedings to go on without
e, in order to make the jury and commissioners believe that
was shamming, and that I could come if I cared to, but
at I did not want to come. As the record proves I was
able to rebut Messrs. Lyon's, MacDonald's, and Flint's
timony in 1899, as I was that of Dr. Moses A. Starr, afore-
id in my letter to Captain Micajah Woods, July 3rd, 1897.
e last thing in the world Dr. Lyon could have desired
uld have been my presence at my said trial in New York,
ne 12th, 1899. The last thing in the world Messrs. Win-
op Astor Chanler and Lewis Stuyvesant Chanler could
ve desired would have been my presence at my said trial
New York, June 12th, 1899. The facts show that they
l all in their power to prevent my presence thereat. They,
course, knew of my physical condition. They, of course,
ew that I had been confined to my bed for three weeks,

and was still confined to it. They, therefore, knew that I was physically incapacitated from a railway journey of nearly fifty miles—White Plains is over twenty miles from New York—to say nothing of getting to court from the railway station in New York. If Messrs. Winthrop Astor Chanler and Lewis Stuyvesant Chanler had been willing to give me fair play, had been willing to allow me to fight for my rights, they would have brought the action to have me declared an incompetent person in the Supreme Court of Westchester County, situated at White Plains and within a mile of "Bloomingdale." Thither I could have been brought on a stretcher if necessary. But the Messrs. Chanler's counsel were strenuously opposed to any such proposition. For my then power of attorney, Mr. Stanford White, aforesaid, informed me that he had proposed to them that the case be brought in White Plains in order to give me an opportunity to be present, but that Mr. Egerton L. Winthrop, Jr., the partner of "our very respectable friend," "Colonel William Jay," was obdurate—would not tolerate it, and insisted that the case be brought twenty-odd miles away, moreover, if the proceedings had been brought in White Plains, the jury, or a committee made up from them could readily have jumped into a "Bloomingdale" 'bus' and driven the short mile from the Court House and looked me over and satisfied themselves beyond a doubt as to why I was not present before them. By putting the proceedings in New York it made that an impossibility.

Moreover: The more one examines the case, the fishier and queerer it looks. Note the outlandish hour at which the proceedings are called. *Four* o'clock in the afternoon! Who ever heard of an honest case being brought at that hour! Moreover: Mr. Flamen B. Candler—the sacrificing priest at this legal butchery of my rights and property, started out with a bluff at the very outset. He says, page 1, 2 and 3, *ibid*, "Gentlemen of the jury, we will call on the stand a number of prominent physicians. * * * We will call several other prominent physicians who are specialists in their departments of learning and show that the disease of which

the alleged incompetent, John Armstrong Chanler is suffering, is progressive and incurable." Dr. S. B. Lyon was the first physician called on the stand. Evidently the first bluff of the sacrificial priest is intended for him. The first bluff of his reverence is "We will call on the stand a number of prominent physicians." One is certainly a number, but as was said by the girl in Midshipman Easy, who got into trouble, "It was such a little one." The second bluff of his reverence is: "We will call several other prominent physicians." His reverence evidently "differs from Webster," for evidently said second bluff applied to Messrs. Flint and MacDonald; and it is the first time I ever heard an educated person claim that several meant less than three. Moreover: The queerness of the said proceedings is by no means lightened or done away with by examining the actions. *Far be it from me to say that the jury had been bought, but I leave it to any fair-minded observer to say if they could have acted differently if they had been bought.* Here we meet another series of bluffs of Flamen B. Candler, all on the same string. He says, page 48, *ibid*, "There is a desire" on the part, apparently, but only on the evidence apparently, not of any juror, but of one or more commissioners apparently) "that the respondent be produced here before the jury: I think it is entirely proper and I shall take an adjournment to any day that will be agreeable to the commissioners and the jury." The jury states that they do not desire to have the respondent produced in Court.

Mr. Candler: "I want to comply with the wishes of the commissioners and jurors."

A Juror: "The jury does not care to have Mr. Chanler produced before them, and for that reason there is no necessity for an adjournment, we can render our verdict now."

Mr. Candler: "The order of the court reads that if the jury or any of the commissioners desire to have the respondent produced in Court and have him put on the stand they may do so."

The Foreman: "It will be very hard to bring this jury

here again, and it is not their desire to have an adjournment of this inquest; they think the case can be submitted upon the testimony which has been given. They do not wish to have the respondent placed upon the stand."

Did ever a man hear an unbought foreman or an unbought jury talk like that? Did anyone ever hear of more selfish, cold-blooded brutality of indifference to the rights of others than that? It will be remembered that this precious foreman of this precious jury had not been serving the ends of justice for months at a time. Far from it. This patriotic and public spirited, high-minded Foreman and ditto jury had never met on my matters before in their lives! And before they had sat thereon they rise up in protest, individually and by their Foreman, against the possibility of bringing them together once more, at a day chosen to suit their convenience, they being the arbiters *pro tem* of my liberty, property and happiness. I know of no more scandalous action on the part of a jury—not openly "boodlerized" not manifestly bought—since the days of the juries of the "Bloody Assizes" of Judge Jeffries. The commissioners now taking hand in the game. Page 49, *ibid.*

Com. Ogden: "The respondent can be produced in Court without any injury or harm being done to himself—I understand the Doctors have testified that he is physically able to attend Court."

Mr. Candler: "I shall produce him here if it is the wish of the commissioners and if we take an adjournment to some other day."

Note "*and if we take an adjournment to some other day.*" We have seen with what an eye the Foreman and jury regarded the question of "an adjournment to some other day." We now see why the sinister hour of four P. M. was set for this inquest, on the evidence, in order that to bring the respondent before it it would have "*to take an adjournment to some other day.*" If the inquest had been held

at a reasonable hour, say ten o'clock in the morning, instead of four o'clock in the afternoon, the respondent could have been put on a stretcher and then on the train, and brought, much to his pain and injury to the Court, or, and the more human way *which is never once mentioned by a living soul*, a committee of the jury could have taken the train to White Plains and had ample time to visit me, and report the same day to the Court for the trains to and from White Plains run every hour. To resume, page 49, *ibid*:

Com. Fitch: "I will ask to have Dr. Lyon recalled."

A perusal of the testimony of Messrs. Lyon, MacDonald, and Flint on the question of bringing me before the jury will have shown with what strenuous unanimity the three gentlemen urged the impossibility of bringing me before the jury without injury to myself! And how unanimously slur my suffering and lay the injury to the mental and not to the physical column, where it belonged, and where they knew it belonged. I shall not further touch on that, it is too apparent; along with Dr. Lyon's conflicting statement, which he attempts to wriggle out of but with poor success. Let us now regard the antics of Commissioner Fitch, for no more serious word could describe the conduct of his re-examination of Mr. Carlos MacDonald, page 52, *ibid.*

By Mr. Fitch: "Do you think, under the circumstances it will be unnecessary (to produce respondent in Court) unless the jury and commissioners desire to have him produced?"

Did any man ever hear such a question issue from the mouth of a commissioner outside the boards of a farce-comedy? Note the word "unnecessary." That deals with a question of law, not one of medicine, and yet it is put to a doctor. A hired witness of the other side is a queer party to whom to apply for a decision on the question of the "necessity" or reverse of producing me in Court. *Verbum sap.*

To resume:

A. "Yes, sir."

Now note the exultant Fitch. After the above foolish question has been answered in the affirmative, to his satisfaction, he apparently is so overjoyed, that in the fresh gush of his gratitude at soon grasping a fee, he blurts out the following unfortunate—not to say suspicious—admission regarding the object of all this backing and filling and hocus-pocus or pretended cross-examination of Messrs, Lyon, MacDonald, and Flint.

Commissioner Fitch says: "I think you have covered the ground. We wanted some reason why he has not appeared at this inquest, and if you say it would be an injury to him and unduly excite him to bring him, unless the commission found it necessary, that is sufficient."

The astounding "break" aforesaid on the part of Mr. Fitch in replying to Mr. MacDonald, touching the "necessity" of bringing me before the jury, is more than mated by a bull. It lies in the words of the proceedings, to-wit: "And if you say it would be an injury to him and unduly excite him to bring him here *unless the commissioners found it necessary.*" What in the world has the Commission got to do with "injuring" or "unduly exciting him?" Has the Commission occult powers? How does their "finding it necessary" control or regulate the amount of injury respondent would suffer if brought to Court? In other words Mr. Fitch says, "If the commission found it *necessary* to bring him here it would not be an injury to him and unduly excite him, to bring him here. But if on the other hand the commission found it *unnecessary* to bring him here, it *would* be an injury to him and unduly excite him, to bring him here." It is laughable.

I think any fair-minded man will admit that it was an unfortunate thing, to say the least, that the judge failed to detect that the respondent must be brought before the com-

missioners and jury, or at least that a committee made up of the latter must visit the respondent and see for themselves. I think that with such a jury, with such a Foreman, sitting under such a commissioner as Mr. Fitch has shown himself to be, there is need for all the restrictions the law can throw around them, to keep them in the straight and narrow way. On the evidence I maintain that to say the least, they are "weak brothers," who under the slightest temptation are prone to fall by the way-side.

* * * * * * * * *

Pages 520-528, *ibid.*

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On page 95 of said Appendix appears the following from said MacDonald's affidavit, he alluding to me, the plaintiff in "Chaloner against Sherman," said, "He went in a trance at the request of deponent and gave the most vivid illustrations of the death of Napoleon. He had told deponent that he was "Napoleon only when in a trance." To-morrow I shall refer to the first of these two sentences, there is not time to-day, concerning my going into the so-called Napoleonic trance "at the request of deponent." To-day, in a few words, I shall say all I have to say regarding the second sentence as follows: "He had told deponent he was Napoleon only when in a trance." This is one of the most skillful, one of the most treacherous, one of the most criminal garbling changing of juxtaposition of words in an allegation that as a lawyer I have ever encountered. Nowhere in the history of time have I seen a finer, smoother piece of legerdemain, never a more palpable case of thimble-rigging. The whole thing depends—the truth is differentiated from the perjury in this short sentence of thirteen words, by the way, from "he" through "trance"—"He had told deponent that he was Napoleon only when in a trance." Now I say them slowly, I see there are fourteen words; No, there are thirteen—I having a bandage over one eye; a cold compress over my right eye, as I have had during the major portion of this deposition, to relieve my right eye, which is weak on this occasion from loss of sleep, I having been so busy that

I have not been able to get ten hours a night, sleep, which, unusual possibly as that sounds, nine hours usually being enough, ten hours of sleep are what I require. I used to get along on 8 and then 9, but during the past ten years, more or less, I have required ten hours sleep, and I have had so much work to do that I have not been able to get ten hours out of the twenty-four to devote to sleep, and I have been doing that since the 7th of September last. My right eye was injured by a stone, a flat stone, small slate stone, which Mr. Winthrop Astor Chanler threw into it when we were boys. He did not do it intentionally, so far as I know, but expressed no regret at the time. I remember that he passed it over carelessly. It nearly blinded me, and if it had been any stone but a slate, it would have destroyed my sight; it was light slate, not heavy, but it affected my eye for life in this respect. It did not damage the vision at all, but if I go a certain number of weeks without sufficient sleep, as above described, my right eye, like other injured members of a person's physique, gives out and becomes dim, when I apply the cold water compress, which hides the light, shuts off the light and keeps the eye cool. The eye is not painful, but prevents me from seeing as accurately as if both eyes were uncovered. I counted these words thirteen, then counted them fourteen because I could not see them as accurately with one eye bandaged.—What differentiates the perjury from the truth is the position of that little word "only." This is a most remarkable case of fineness in crime. I had just come out of the said Napoleonic trance—I have a more or less accentuated sense of humor; I like a joke as well as the next man, and I can stand the laugh on myself. When I came out of this trance which has been described by Dr. MacDonald as being "the most vivid illustration of the death of Napoleon," the doctors were evidently astonished. Without going into the trance at all, I must say, to avoid confusion, that in the trance I made no gestures whatever; I represented the death of Napoleon Bonaparte; I did not make a move; I simply shut my eyes after initiating the action of the trance (that I will touch on to-morrow).

All this done—that is pure psychology—here I simply touch on the results;—before I went into the trance, I told the doctors that my subconsciousness had given me to understand—words to that effect—that when in a trance my features would resemble those of Napoleon Bonaparte in death. That was before my nose had undergone this change which the photograph proves it has done, from straight to aquiline, or, to be more specific, from more or less straight to more or less aquiline, not to mention the other changes proved by the photograph, and my face did not at all resemble Napoleon Bonaparte with the single exception of the chin, and in its height and width only, the brow, the forehead, the height and width but not in its angle, it was too receding. I had no idea that I was going to represent Napoleon, and I could not tell that I did, naturally, since my eyes were shut, and the only way I could tell whether I did or not was the effect it had on the audience. I had done it only twice before in my life, once before the late great sculptor, St. Gaudens, in February, 1897, at my room in Kensington Hotel, New York, a day or so after I had done it before Stanford White—again he bobs up like Banquo's ghost— and Dr. X. aforesaid. I shall touch on that to-morrow; it will suffice to say here now that both of these gentlemen, so to speak, I flag the Docs, there is no idea of grandeur here—had been impressed—I shall quote their language to-morrow—by the action of the trance on my features, on my face, by which I mean the movable portion of the skin of my face, the movable portion, the mouth and the movable portion of the cheeks. That will be explained to-morrow in the initiation of the trance, which is very peculiar, not to say extraordinarily queer. When I came out of this trance, seeing how serious Drs. Flint and MacDonald were—I shall describe what they said and did while I was in the trance to-morrow; I want to cut this short because the time is too late—they looked so solemn that I wanted to "take a fall out of them," I wanted to "josh" them; they are both unusually intelligent men, I will say that for them; both of them English scholars and both of them authors of books, certainly Dr. Flint and

I am very sure Dr. MacDonald is; and if he is not, he has a literary turn from the language he used to me. Wishing to "josh" him, I say, knowing that they would think that what I was going to say was just what they wanted me to say, I was going to use an epigram, so to speak, which carries its contradictions in its trail, like a scorpion carries its sting, at its end; I wanted to say something which would make the doctors think I was going to give myself away by what I said; so I started out with what appeared to be an absolute confession of belief that I was the reincarnation of Napoleon Bonaparte. I said almost these words, certainly their effect, "I boldly say that I am the reincarnation of Napoleon Bonaparte." I was on thin ice if I did not say something else; I was a dead one if I did not say something else" I was playing with fire, for I would never have gotten out of Bloomingdale if I had not said anything else, without a long argument. Although, based on legal rights as regards religion, since reincarnation forms one of the main tenets of the Buddhistic religion, and no man is prevented from joining what religion he chooses, and if I should choose to become a Buddhist, I could say with perfect legal right that I believe I am the reincarnation of Napoleon Bonaparte, and any man who laid his hand on me to arrest me for inoperation of intellect on that score would lay himself open to arrest for false imprisonment, for there is no limitation to the Buddhist as to whom he represents in his avatar of earth, but I am not a Buddhist, and I knew I was in a dangerous position; but danger has its thrills as well as other things, and I knew that unless I was hit with a club, "I could get home," and I could put a saving clause in this suicidal statement—suicidal unless I turned Buddhist as aforesaid, so after saying, "I boldly say that I am the reincarnation of Napoleon Bonaparte," I "saved my bacon" by the words, literally, "but I only say so in a trance," which is parallel to saying, "but I only say so in my sleep, when I have eaten plum pudding and have indigestion." Nobody who knows anything about law could hesitate a moment regarding the absolute impunity with which a man can say

what he absolutely chooses in his sleep. There is no law against a man saying anything he chooses in his sleep after eating plum pudding. My joke worked. The faces of Drs. Flint and MacDonald lit up (I flag the Docs) almost as if they had electric lights behind their eyes; they thought my time had come; that on that occasion I had talked myself into a noose. I paused for a second to enjoy this joke because I knew I was going to throw them like Texas steers with lariats from horses, so after making the statement, "I am the reincarnation of Napoleon Bonaparte," I paused, drank in with delight the ill-founded triumph on the faces of Drs. Flint and MacDonald, and then dashed their cup of triumph to the ground by my saving clause, "But I only say so in a trance." They shifted the position of the adverb "only." MacDonald says: "He had told deponent that he was Napoleon only when in a trance." This crafty shifting of the truthful position of the clarifying adverb "only," makes me say that I do say and do believe that I am Napoleon Bonaparte when in a trance, which is an abominable perjury and lie. I do not believe that I am the reincarnation of Napoleon Bonaparte or anybody else under any circumstances, but if I enter a psychological condition known to Psychologists as a trance, which is called my "control," alluded to before to-day, is Napoleon Bonaparte, alleged by my subconsciousness. I do not believe it is Napoleon Bonaparte, as a psychologist, on the strength of my work as a psychologist, to which work I challenge adverse criticism; let anybody pick any flaws, and they can, in the logic of "The X-Faculty, or the Pythagorean Triangle of Psychology,"—as a psychologist, I know the action of the subconsciousness when in a trance, and that never does a subconsciousness act in any given instance anywhere without claiming to be some one. Generally with mediums, it claims to be the spirit of some dead man. In this insance, the "control" was not Napoleon Bonaparte, whatever I may have said previously a few lines back; the "control" is the alleged spirit, not a spirit of the dead, that is my specific psychological "control" when in a trance, and it was this "control"

which made my face resemble the death mask of Napoleon Bonaparte. It was not even alleged by the subconsciousness that it was the entrance of Napoleon Bonaparte into my physique, making my face by the entrance into my body assume his appearance. I state this psychologically, specifically, so there will be no mistake, that the "control" is the alleged spirit, not of the dead and not of Napoleon Bonaparte. This statement of MacDonald's makes me out to believe that when I am in a trance I am the reincarnation of Napoleon Bonaparte, which is an abominable, diabolical lie and perjury. As soon as I threw the Docs with my said lariat on the said mud bank, figuratively speaking, they both showed by their faces that my joke had worked. Their faces fell. Flint sank back in his chair with a groan, and MacDonald, a lighter man in avoirdupois, ejaculated the following words with disgust, "You can't catch him," showing that they knew exactly where I was, that I was perfectly safe in what I said; but they would not leave me safe and they changed the word "only," the position of it, and instead of being truthful and saying what I said, that I only said I was Napoleon in a trance, they said that I said that I was Napoleon only when in a trance. That completely belies my statement, for I never said I was Napoleon under any circumstances in my waking, ordinary moments, but when talking in my sleep, so to speak, when in a trance of a certain nature, a Napoleonic trance, I did say when in a trance that I was the reincarnation of Napoleon Bonaparte.

By Counsel for Defendant: Excepted to as containing conversations with third parties, as argumentative and irrelevant.

At this point the deposition was adjourned to two o'clock to-morrow, Saturday, October 21st, 1911.

Pages 538-539.

By Counsel for Plaintiff: Mr. Chaloner, have you anything further to say concerning the statement of Dr. Carlos F. MacDonald, in his affidavit to the commitment papers?

A. I have. The remark in Dr. MacDonald's affidavit alluded to the other day "He had told deponent that he was Napoleon only when in a trance," taken from this printed copy thereof in the Appendix, in a copyrighted publication known as "The Brief and Appendix," in Chaloner against Sherman—Dr. MacDonald transposed the adverb "only" as aforesaid. The way I had it when I made the remark as aforesaid was in effect: "I boldly say that I am the reincarnation of Napoleon Bonaparte, but I only say so when in a trance." That adverb "only" qualifies the verb "to say." Dr. MacDonald has transposed it so that it does not unambiguously qualify the verb "to say" or the verb "told," used by Dr. MacDonald in the said sentence: "He (Plaintiff) had told deponent that he was Napoleon only when in a trance." My statement unambiguously qualifies the verb "to say," or the verb "to tell." In MacDonald's manipulations of that adverb he does not unambiguously qualify the verb "to say" or the verb "to tell." MacDonald moved the adverb from where it should have been. The adverb should have stood immediately before the verb "told." MacDonald's sentence would then have have read thus: "He had only told deponent that he was Napoleon when in a trance," which would have truthfully reflected my statement, which was in effect: "I only say that I am the reincarnation of Napoleon Bonaparte when in a trance."

Deposition of 1911, Vol. II, Pages 477-518.

EXHIBIT H.

COMMITMENT PAPERS, CHARGES IN DISPROVED BY PLAINTIFF-IN-ERROR, pp. 477-518.

The deposition was resumed at 2:30 P. M., Friday, October 20th, the same parties being present.

By Counsel for Plaintiff: Mr. Chaloner, I hand you a document and ask you to describe it and its contents.

A. This is a certified copy of my commitment papers, issued by the State Commission in Lunacy of New York, and certified to by T. E. McGarr, Secretary, dated the 14th day of May (the certificate) 1897, and reads as follows:

"STATE OF NEW YORK,

State Commission in Lunacy.

I, T. E. McGarr, being the Secretary of the State Commission in Lunacy, do hereby certify that I have compared the copy of the commitment in the case of John Armstrong Chanler, hereunto annexed with the original thereof on file in this office, and that the same is a correct transcript therefrom and of the whole of said original.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of my said Commission, at Albany, this 14th day of May, 1897.

T. E. McGARR."

I shall now take up the charge against me contained in the commitment papers, and sworn to by Moses A. Starr (M. Allen Starr, as he signs himself here). The commitment papers are dated the 10th day of March, 1897. In

these commitment papers they are so made up that the lines are numbered, every word is on a line and there are a limited number of lines, there are 363 lines from the first page through to the ninth, the last. On the back of the ninth page is the caption:

STATE OF NEW YORK.

State Commission in Lunacy.

Petition Certificate of Lunacy and Orders in the Case of John Armstrong Chanler.

Residence, Hotel Kensington.
County, New York City.
Date of order of Commitment, March 10, 1897.
Institution, Bloomingdale, White Plains, N. Y.
Date of Admission, March 10th, 1897.
Number of Case Book, 4, page 314.
Number for years, 53.
Consecutive number, 3134.
Legal Statutes (state whether indigent, public or private), Private.
Price per week, $100.00.

That was the price I was forced to pay at "Bloomingdale."

On line 247 of said papers occurs the following words: "Sworn to by Dr. Starr and" ..... I do not wish to mention the other doctor's name. Of course, his name will be brought in but I wish to shield him as far as possible from any intentional complicity in this case. This doctor, whom I will call "X," is a good fellow, or he was when I knew him, and I believe he is yet, I have no reason to believe he is not and he was not in any way, shape or manner, an expert in lunacy. He was more of a surgeon than an expert in the nervous diseases, his specialty is cancer and there is nothing in common between cancer and insanity,

nothing whatever except this, that both of them are absolutely incurable and are absolutely obscure as to their origin, and baffle the medical profession as to their cause. Dr. "X," like many other doctors in New York, had been admitted to the practice of the specialty of being a medical examiner in lunacy as the phrase is in New York. This certificate, so to speak, allowing him to practice as an expert in lunacy, which is, I understand, issued by the State Commission in Lunacy, which issued the said certificate from which I have quoted. They satisfied themselves that the physician is a graduate over three years of an incorporated medical college, and then nothing being opposed they will give him this certificate. It is not necessary for him at all to be an expert in nervous troubles, so the certificate, Medical Examiner in Lunacy, is handed out by the State Commission in Lunacy in New York to whom they like, or to those whom they would like to stand well. Dr. "X" knew practically nothing about nervous diseases, that was not his work in medicine, he was an excellent expert in cancer and excellent general practitioner, but nervous diseases were not in his domain. I did not always think thus of the doctor. I did not always have this charitable view—not charitable because that indicates that he has done me an injury—whereas Dr. "X" has done me no intentional injury. I believe that because he is absolutely honest. I felt that Dr. "X" was as much to blame for getting me into "Bloomingdale" as Dr. Moses Allen Starr, but I found on excellent authority that, under the circumstances, Dr. "X" was absolutely innocent of all intention. A few days after my investigation I was inveighing against the doctors who had put me in "Bloomingdale," Dr. Starr and Dr. "X" in my cell before Mr. Stanford White. This was a few days after my incarceration and I was practically damning Starr and "X" 'up hill and down dale' very naturally for a man under the circumstances, and White said "You ought not to damn "X"," and I said, "Why?", words to that effect. "I would like to know why." He said, "Well you ought to have heard "X" talking on the subject." I said "In what way." He said "Why, when the commitment

papers were brought to "X" to sign he said, in effect, 'I don't want to sign this, I won't sign it,' and expressed himself far stronger than that." Finally, though, he yielded to the force of professional etiquette and recognized that if he did not sign, he having been with Starr and having visited me, that it would make quite a stir in the medical profession, and would not be living up to professional etiquette, particularly among medical examiners in lunacy.

So "X" finally yielded to the force of professional etiquette and signed the commitment papers with regret and disgust. So soon as I heard that I said, "Why, that lets "X" out, and he's all right, I understand a man's being forced into doing what he did, I understand the force of professional etiquette in medicine and also in the legal profession, for one doctor will let a man die almost, if not absolutely die, before he will attend him, unless he has been called in by the first physician in the case." Knowing the savagery of medical etiquette I excused Dr. "X" for what he had done and I said to White, "Bring him up, I would like to see him, for he is a good fellow and a dead game sport, he has traveled abroad, has a splendid sense of humor and I like him." Well, Dr. "X" did not come and I asked White later and he said, "He did not care to come." Well, I could understand that. Then I inferred that "X" was a little regretful about what he had been forced to do, or breaking medical etiquette and therefore, did not want to see me where I was, so I refrained from mentioning Dr. "X" name and when it does come out in the case I go on record now that I don't want to be understood as having anything but the friendliest feeling for Dr. "X", and all sympathy for him as a victim of medical etiquette. This line, on "little line 247" before alluded to, is preceded on "line 243" by the following printed words:

The patient said (state what the patient said, if anything, in presence of the examiner):

then there follows what was touched on at a previous day in this deposition, as follows:

> "that the color of his eyes the shape of his nose, and ears had been changed so that he would resemble Napoleon."

As I have said before that is garbled. What was said in a trance was "would be changed," not "had been." To resume. "Line 247" "That he is inspired to lead a holy war in Europe," that runs on to 'line 248'—the words "a holy war in Europe occur in 'line 248." Well, I shall say now that in my letter to Capt. Micajah Woods, in evidence, dated July 3rd, 1897, I made general denials to the majority of these statements with one or two exceptions. I admitted that the color of my eyes had changed from brown to grey and that I frequently went into a trance-like state, as it said on 'line 252 and 253' "frequently went into a trance-like state, in which he talked French." I entered this trance as I said in the letter to Capt. Woods, at the request of the doctors, and outside of these two exceptions I put in a general denial to the lines, all of which I shall read. Now of course, a lawyer understands and a juryman will understand that this general denial is made as a man and as a lawyer. I deny saying these different things. I did not say these things in the legal acceptance of the word, so to speak. I said this in a qualified way. I said them "in a trance-like state" as much qualified as though I had said them in my sleep, as though the commitment papers read "frequently went to sleep and in his sleep talked French," or "frequently went to sleep and said that the color of his eyes, etc.. etc.," as had been stated on 'line 244,' and so on. I utterly deny saying this. It was as a man and as a lawyer. I did actually say these in a qualified way but my mind did not say them, my thinking mind, it was said under trance-control (I flag the "Docs") in a technical or a psychological meaning of that word "control, which is when a man or woman is in a clairvoyant trance, and I used the word "Control" in its tech-

nical sense, not that I was ruled by any manner of means by this trance, but simply in the technical sense. The trance was the "control." In every instance, Mr. Stenographer, when I use the word "Control" in this deposition to-day, put it in quotation marks, because it is—the psychological word. I did say these things in my sleep in a trance-like state; I heard myself say them and nobody in the sound of my voice was more surprised and more amazed at the preposterousness of these sayings than myself, but I had the nerve to allow my subconsciousness to continue talking "through its hat," so to speak, (I flag the "Docs"—my subconsciousness has not got any hat), because I am a more or less bold investigator, I am not certainly, on the record, a timid investigator in that unknown domain—advanced experimental psychology, and since the doctors knew I was in a trance-like state, as their oaths here indicate "frequently went into a trance-like state," lines 252 and 253, word for word, that I "frequently went into a trance-like state in which he talked": that there was no doubt about this, that they knew the scientific nature of this experiment that I was making. Dr. Starr requested me to do it, he said he was interested in Oriental things, using the word "yogi," a Hindoo word for an ascetic, an East Indian ascetic, and I never heard it before, and I looked it up in the dictionary, and found out what it was, after he had explained it; it is in the Standard dictionary, if I remember rightly, and following out that line of his alleged interest in this sort of thing and my frankly confessed ignorance of trances and trance-like states, and any fancy dances, figuratively speaking approaching them. I never entered a trance of this sort, because on these few specific occasions this was the first time I had ever entered a trance-like state in any way in New York, and it was new to me, absolutely new. I wanted to know what I would say. Mind you, this subconsciousness will not act unless it wants to act, I cannot force it to act. Any psychologist knows that, knows that trance utterance cannot be compelled; "You may lead a horse to water, you cannot make him drink," and I was as surprised at what I said, and as

incredulous as anybody who heard me. I did say, to my utter surprise, in this trance, that I was inspired to "lead a holy war in Europe." I could not make it out how on earth even my subconsciousness could say such a fool, if you please "dam phool" thing I pondered over it, and pondered over it for years. I could get no light. Not until about nine years later, to be exact, ten years later—ten years almost to the day, after this drunken talk, this fool talk—not that I was drunk, but it was as contemptible to my mind as though I had been drunk, I had no more respect for it than if it were a drunken utterance—ten years almost to the day and year, broke over my mind (I flag the Docs)—it was not like the vision of St. Paul, or Constantine the Great, I saw no light in the Heavens, but I saw a light in the dark places of the crypt, so to speak, of the commitment papers represented by lines 247 and 248, aforesaid, which are in the following words "that he is inspired to lead a holy war in Europe." It makes me smile as I read it now—I cannot read this with a straight face; I suppose I could but it is more of an effort that I care to put forth on this occasion. The light was that this 'holy war,' which is the technical word for crusade; the definition in Stormonth's unabridged dictionary for crusade being:

CRUSADE: To go on or engage in a crusade, hence to contend zealously against any evil, or in behalf of any reform;

CRUSADE: One of a number of war-like enterprises, undertaken by Christians of Western Europe under the banner of the cross, against the Saracens, for the conquest of Jerusalem and the Holy Sepulchre.

2. Any converted movement vigorously prosecuted in behalf of an idea, or principle, or in the interest of reform, as the Crusade against Interference, and the variant of 'crusade' being a 'holy war.' I knew that it was a crusade. I had tracked the word up, but I did not see how I could lead a crusade in anything; we have a crusade against cor-

ruption and a crusade against bribery and crusades of numberless kinds, and in putting the word "crusade" as the "variant," which is the technical word in dictionaries for a word which can be used at will in place of another, in other words "holy war" or "crusade" could be used interchangeably. Finding that a "holy war" was a crusade half of the terror of this trance utterance (I flag "the Docs"—I mean the terror of disgust at having said such a foolish thing although I was not responsible, being in a trance-like state, but was disgusted), a fact that terror was dissipated when I found it meant "crusade"—a leader in a crusade in Europe—might mean a literary crusade. But the light did not break on me as before described until I had published the Lunacy Law of the World, that little book of mine, and had received flattering replies from the Ministers of Justice of Russia, Austro-Hungary, Germany and Italy, from four out of five of the great five powers of Europe, whose Ministers of Justice I had sent the book. (I may say that this crusade was not entirely confined to Europe, it was to start in this country, and what clinched it in my mind was the encomiums of the superior law officers of the empires of Russia, Austria, Germany and the Kingdom of Italy). And then I said to myself "I now see" or words to that effect, "what my sub-consciousness was driving at." It was a most profound and clairvoyant utterance, it was a most pronounced prophetic utterance, an unequivocal truthful prognostication of an event ten years before that even occurred. The trance-utterance was made before the tenth of March, 1897, and not earlier than the 13th of February of that date, between the 13th of February and the 13th of March—the 13th of March the day I was taken to "Bloomingdale"—between those dates was this trance utterance made, and not until after March, the date of which ten years previous to the month the trance utterance was made, between that month and the February preceding—after March, 1907—I received the favorable criticisms of the American Law Reviews and of the European Ministers of Justice before alluded to. *Here is a most astonishing thing from a psychological point of view.* My sub-

consciousness knew, on the evidence, that I was going to go through the succeeding ten years, from the time of the utterance expressed, a work of toil, mental toil, which would result in putting me in possession of facts and equipping my intellect in handling those facts in such a way that I could make good this prophecy, namely, that I could lead a holy war in Europe, against the diabolical lunacy laws, falsely so called laws, which now disgrace Europe as they disgrace nearly fifty per cent. of the States of this Union. This crusade in Europe is not to begin until the crusade in the United States is finished, or well begun, well under way. I have already said that trance-utterances are oracular in that they require translation, because they contain ambiguities, contradictions and false statements. The false statement here was that I was inspired,, the words are—line 247—"that he is inspired," those words are false. I don't believe, so far as my belief goes, I don't believe that I am inspired. I am a pretty hard man to convince, nothing short of the appearance of an angel of light in my library and my pinching myself to convince myself that I was awake, and his telling me that I was inspired would convince me that I am inspired in anything under the sun. So that the words "that he was inspired" are what I call the discards in a trance-utterance. That is one of the discards, a falsity. We next come to a more monstrous statement than that. Of course this is not a monstrous statement as unequivocally explained now by me that the goods that I have delivered, legal reviews of this country and of Europe, but unexplained; it is monstrous, the words "that he is inspired to lead a holy war in Europe." Unexplained, it is wonderfully, monumentally monstrous, ridiculously absurd and almost blasphemous. We now come to a statement as aforesaid more monstrous than that. It makes the previous statement pale in comparison. The words are—lines 248 and 249—"that His coming had been foretold in the Book of Revelations" (I read it in a whisper). That is a monstrosity of utterance, a bald monstrosity of utterance. Of course, as a lawyer, I was not in the least 'jarred' or 'rattled' by giving vent to said mon-

strosity, I am a lawyer and know my rights and I know that the pursuit of science is a legitimate pursuit in any civilized country, and this saying had been brought about in the legitimate pursuit, in researches into the nature of the human mind to see if I could make it divulge some of its secrets, figuratively speaking (I flag the "Docs") by means of a trance-like state. There is a sacred saying to this effect, as I remember it. I have never knowingly seen it, that is to say, may have heard it, but I don't remember how it looked. I read it because I knew that I read every word in the Bible, but what makes me remember it more or less is that the head master of the military academy, the Episcopal Military Academy, known as St. John's College, at Ossining-on-Hudson, where I was from the age of ten to the age of 14—where I went in the eleventh month of my eleventh year—the head master of this was the Rev. John Breckinbridge Gibson, a relative of mine and a Doctor of Divinity in the Episcopal Church with a church at Briar Cliff, a hamlet four or five miles, or two or three miles, from Ossining. He read to us in the chapel attached to the Academy. We had the Scriptures and the lessons at prayer and we went to church in Ossining and Doctor Gibson would read from his desk in the chapel, and he read with great emphasis, and this was a verse he read more than once, I remember it all these years, from previous to 1877 to date, to this effect: "He searched the Scriptures thoroughly to see whether these things were so." I have not looked in a concordance ever in my life to track up that or check it over, and I may be mistaken, after the length of thirty years in a quotation, even the spirit of it, but I am under the impression it is in the New Testament, at all events it sheds light on what I did. Any member of this jury can be pretty certain that I spent careful years in searching the Scriptures—'thoroughly,' which is thoroughly, not to "see whether these things were so" but what on earth any Scriptures could, in any possible manner short of far-fetched, any possible manner short of far-fetched, could contain any such statement. I, of course, knew that I was dealing with an oracular utterance, with

poetry so to speak, and not with prose, with poetic lessons, and not with the laws of rhetoric or the figures on which the actuary in an insurance company bases his calculations. I knew I had considerable latitude; that I had to allow for considerable latitude in the meaning of this phrase, but granting all that, I could not, to save my life I could not get at it, what on earth was meant by this, and for over a year, I was in absolute darkness about it. This darkness was, of course, figurative (I flag the "Docs"); it was an Egyptian darkness, it was a darkness that could be felt, and the darkness did not become less dark until I developed the faculty of rhyme in "Bloomingdale" aforesaid, until which development of this faculty of rhyme I did not get light on this darkness. This light that I noted was not light, it was simply less dark, the darkness was less dark; it was simply a feeling of getting nearer the light than a seeing of the light. I did not see a light metaphorically speaking until years afterwards, not until ten years afterwards, about. About the time that I got this light as aforesaid (I flag the "Docs") regarding the preposterous statements until explained about leading a holy war in Europe—after that—after I saw in 1907 what that meant, that was the legal crusade against illegal law, then this light, figuratively speaking, dawned on me. I found in a certain portion of the Scriptures some half dozen verses, which absolutely throw a, so to speak, head-light on this coal mine of darkness and cleared it up as much as had the light, figuratively speaking, cleared up the blackness surrounding the aforesaid 'holy war' utterance in Europe. It should be remembered that this is a chain of trance-utterance—a chain consisting of various links—that there is a link, one of the links, which precedes this link here, concerning the Book of Revelations, one of the preceding links which must not be lost sight of when inspecting this chain composed of various links of trance-utterances (I flag the "Docs"—it is not a metal chain, but a chain of mental ideas)—the preceding link is the word "Napoleon," in the verse on line 245 "changed so that he would resemble Napoleon" lines 245 and 246. That word

"Napoleon," that link had light thrown on it after, in my thorough search of the Scriptures I had found in the Scriptures an explanation of the link on lines 248 and 249, namely, "that His coming had been foretold in the Book of Revelations." I found in the Book of Revelations, 9th chapter, verses 2, 3, 10 and 11, a complete explanation, a completer legal interpretation of the above preposterous, when unexplained, trance-utterance "that His coming had been foretold in the Book of Revelations—lines 248 and 249 commitment papers. The way I came to get light, figuratively speaking, on this abysmal subject was that I was struck by the similarity in the equipment of a certain animal I will call it at this stage of the explanation, mentioned in this Chapter 9, the similarity in the equipment in aggressiveness of a certain animal and the equipment of my sonnets "Scorpio" which, of course, is the Latin for the word "Scorpion." I did that because a scorpion stings and because it is the Zodiacal sign in the almanac of my natal month, which is October, I was born on the 10th of October at nine o'clock in the morning (so my nurse told me, I don't know it for a fact), and a scorpion is the sign in the Zodiac for the month of October. A scorpion stings and my sonnets sting when I want them to sting; at least I say so on the stand; if anybody disbelieves it I will see if I can sting them. I can sting anybody if I want to do so (on the record in the sonnets). But a closer similarity between a scorpion and my sonnets did not occur to me when I decided to call my book "Scorpio." I now give the definition in the way of the description of the scorpion, taken from the concordance of this teacher's Bible:

SCORPION: (Hebrew-Akrabbim): several species of this venomous creature are to be found in Palestine, some quite small, and others nearly half a foot in length. Their claws are graspers of food, but the last joint of their bodies is slender and furnished with a sting supplied with a poison gland. The sting inflicts the wound and the poison irritates it."

Rehoboam (a Jewish King) threatened to lacerate and irritate the backs of his people by using the scorpions instead of whips. 1 Kings 12:11. Years after I had thought of the name "Scorpio," for the first edition of my sonnets, first book of sonnets, the similarity between an actual scorpion, a live scorpion, and my sonnets dawned on me with quadruple force, and it occurred to me that, figuratively speaking, (I flag the Docs) they were to all intent and purposes literary scorpions, attacking whom I sent them against and stinging them to literary death, not a literal death, but literary death. When that occurred to me what did I see in the Book of Revelations? I saw two wondrous things, wondrous in the magnificent accuracy of the trance-utterance in showing the link "Napoleon" in the said chain of trance-utterances in having that word "Napoleon" in said trance utterance, a link in the chain, in the chain of trance-utterances, the link on lines 248 and 249 is seen, namely, that "His coming had been foretold in the Book of Revelations." It was as clever an acrostic as ever I saw. I hasten to say that there is no swelled head in this, for I could not do it to save my soul from Hades. I never solved an acrostic in my life, they are beyond me, I don't attempt things I cannot do; I cannot solve acrostics and I did not try to. Not being able to do this I don't have swelled head when I say that it was a brilliant acrostic any more than I would have swelled head if I were to say I dreamt a brilliant acrostic. In these four verses, numbers 2, 3, 10 and 11, in Chapter 9 of the Book of Revelations, there is an exact parallel, mathematically exact, of my writing hundreds of sonnets—about two hundred of them were written in "Bloomingdale," in this hell on earth, a mad house cell, and hundreds were written afterwards. The words "mad house" and "Hell" are variants in the dictionary sense, they are interchangeable terms. A phrase in London common to the men in the street is "mad as Hell and Bedlam." "Mad" of course, means crazy in this sense, and one of my keepers in "Bloomingdale," an ex-life Guardsman in Queen Victoria's Guards, a strapping six-footer, who incidentally made a deadly attack on me, which

will be described later, told me of this phrase which I had not heard "As mad as Hell and Bedlam," and my reading has since proved that the word "Bedlam" is synonymous with "mad house" for this reason: Bedlam was a great mad house in or near London, and its original name was "Bethlehem" and the English in their matter-of-fact way, taking short cuts through long words, contracted "Bethlehem" to "Bedlam," so the real name of a "mad house" is "Bethlehem," and the words "mad house" and "Bethlehem" are synonymous in this connection as aforesaid. The fact that I was in a hell on earth (I have shown that hell and a mad house were synonymous terms for the expression crazy as "Hell and Bedlam" or "mad as Hell in Bedlam,") "mad" being the English use for the word 'insane.' That is known to all school children from "Alice in Wonderland"—the mad hatter in "Alice in Wonderland," or "Through the Looking Glass," (I don't know which it appears in, it is in one or the other of those two, it is years since I read them)—the mad hatter is not the 'angry hatter,' the 'disgruntled hatter' or 'grouchy hatter,' but the 'crazy hatter.' I, in this Hell, writing these sonnets by the score and finally emerging, coming out of this Hell, coming out of this bottomless pit, which is another synonym for hell, at the head of an army of sonnets with stings in their tails, in their ends, their ends being the climax-couplet, the rhymed-couplet, the concluding-couplet of the Shakespearean form of sonnet in contradistinction to the Miltonian form—the strict Italian form—and I was accused of believing—I was accused of saying—that I had said in the trance-like state that my features would (the correct reading)—"would change so that I would resemble "Napoleon." Now if I could find in those four verses anything suggestive of an army of scorpions; anything suggestive of those scorpions coming out of any place suggestive of hell, and being under the control of any man whose name suggested "Napoleon," I win, and the trance wins, and the "Docs" are "in the soup." Lastly, if, in that connection, I can show anything suggestive of this scandal, the stench that this case has already started, on the evidence, and which stench will

increase as the facts are unfolded, and as the stench is frequently accompanied by a smoke and caused by smoke—if you burn certain things it makes a stench and the smoke is the thing that makes the stench—if I can show that there is a smoke mentioned in connection with those scorpions, or to be specific, any animal like a scorpion or armed like a scorpion as regards aggressiveness, as aforesaid I will "cap the climax" of strict similarity and parallel—deadly parallel, for my false accusers, *and here we find it.* I shall now read from Chapter 9, Book of Revelations; I find I had better read the sixth verse Chapter 9—and this is headed by the caption in Italics: "At the sounding of the fifth angel" and the first verse reads "and the fifth angel sounded and I saw a star fall from heaven unto the earth and to him was given the key of the bottomless pit," verse 2—now we come to the similarity: "And he opened the bottomless pit," without any connection between the "He" and myself literally. There is the first parallel established. I take the "lid off" the words in the second verse are "and He opened the bottomless pit and there arose a smoke out of the pit" (I will read along now,) "as the smoke of a great furnace, and the sun and the air were darkened by reason of the smoke of the pit," here I established my second deadly parallel; the scandal, the stench, the smoke, and I say that this scandal will be international because a man named in it had received international honors, the great astronomer, Lewis Morris Rutherfurd, and here is the third parallel which I did not mention before—or we will call it "parallel two prime because I did not indicate the scope of the smoke. It is here indicated: "and the sun and the air were darkened by reason of the smoke of the pit," indicating the not only national, but international scandal, seeing that the same sun shines all over the world—not at the same time, of course. Verse 3: "And there came out of the smoke locusts upon the earth and unto them was given power, as the scorpions of the earth have power." Here I establish my third parallel. First parallel established; second parallel established, parallel two-prime established, and third parallel established. Here we have the

equivalent of scorpion, namely, "locusts" "and unto them was given power, as the scorpions of the earth have power." Verse 10 "and they had tails like unto scorpions and there were stings in their tails." Fourth parallel established. Now then, as to where "Napoleon" comes in in this game, and strange to say that is the easiest part of the game. Verse 11—here we find by the use of an acrostic perfectly simple (that of Napoleon) "and they had a king over them which is the angel of the bottomless pit." I don't know what I said—or have I said?—that I had established the parallel to the bottomless pit. That should be one prime, for when I said what I was going to do I said if I could find anything like hell, or words to that effect, and I use the words "bottomless pit" in my prognosis, to use a medical term, I use the words "bottomless pit" and "hell" as synonymous; therefore, I have not only established the first parallel, but the parallel one prime; the first parallel, so to speak, "took the lid off" verse 2 words exactly "and he opened the bottomless pit," the term as to the bottomless pit, which of course, means hell. A madhouse cell which is an interchangeable term for a hell on earth (compare hell and Bedlam, as aforesaid)—and a madhouse cell is thus synonymous with "hell" and synonymous, therefore, with the "bottomless pit"—all preempted by me in my said prognosis. To resume the reading of verse 11: "And they had a king over them which is the angel of the bottomless pit, whose name in the Hebrew tongue is "Abaddon, but in the Greek tongue hath his name "Apollyon," which is the root word "Napoleon" in the sentence (I flag the "Docs"). Thus the word "Napoleon," as I shall derive it, is a strict academic deduction from the same name in the two different tongues, the Hebrew and the Greek. Join "Abaddon" and "Apollyon" and get a combination of the two by adding the last letter of the word "Abaddon" to the first letter of the word "Apollyon" and I get "Napolyon." I drop one 'l' from "Apollyon" and I change the 'y' to an 'e' and we have the word "Napoleon." *That, I maintain, is a strict legal interpretation of this otherwise monstrously weird, preposterous trance prognostication*, and this interpre-

tation did not come to me as aforesaid, until years after the trance-utterance was made, and until I had made good in having at my back an army of scorpions in the shape of sonnets with stings in their tails, and I do not think I flatter my sonnets when I say they have stings in their tails since two of my sonnets, on the evidence given at yesterday's deposition pierced the porcine epidermis of George Bernard Shaw, stung him to the quick so much so that he slapped an old lady's face to irritate me, figuratively speaking, in sneering at my great-aunt Mrs. Julia Ward Howe, in an article read yesterday written by Shaw with the wish and hope that I would see the article and be irritated by it, lacking the courage to attack me personally, on the evidence. I do not think that I over-praised my sonnets when I say that they do carry stings in their tails. In the text it says these animals, these creatures were locusts. Strangely enough the year that this interpretation of the text is given is a locust year, and I put that in for what it is worth, this is a locust year—locusts come every seventeen years and this happens to be a locust year. That statement makes the hypothesis, to-wit: that the clairvoyant trance-utterance foresaw and foretold the very year, namely, 1911, that this interpretation of the trance-utterance would take place as contended in this trance-utterance aforesaid, on lines 248 and 249 "That his coming had been foretold in the Book of Revelations." I do not say that the trance-utterance did know that, but I say that it is a working hypothesis, that the fact that the word 'locusts' appears in this explanation in the text allows the hypothesis to cover a year in which there are locusts, they marking a time in the calendar, namely, every seventeenth year, and the year in which the interpretation is given being a locust year. *These two trance-utterances—the one concerning the holy war in Europe and the one concerning the Book of Revelations, are marvelous in this particular: That they indicated that I would develop two new mental faculties, because they make good by two faculties being developed in my mind which were never there before the trance-utterance.* The first faculty is the faculty of writing prose and writing prose

specifically in legal fashion, writing a legal text book; but the second faculty is the opposite, the antithesis of legal prose, of all prose, namely, rhyme. The subconsciousness, on the evidence, knew that my mind would be richer years later by the acquisition of two intellectual faculties, which I did not then possess, namely, prose-writing and, speaking technically, poetry-writing. At the time the trance-utterance was made I could not write anything beyond a letter, and the letter was stripped of all literary quality except clearness—I never was obscure unless I became redundant through not handling my matter with sufficient skill to prevent its overflowing the ordinary bounds in length of a sentence, but as for any literary touch I was absolutely without it. *Here we have three absolutely unequivocal clairvoyant utterances. The first has been proved regarding that my features would change so that I would resemble Napoleon.* That is the utterance in effect. That has been proved by photographs in a previous day of this deposition. That is the first prognostication. The second, *that I would develop a prose style and ability to write something therewith that would enable me to carry on a crusade, as it turned out of a legal nature, in Europe, and third, that I would become a poet. This last is made good by the criticism of my book "Scorpio," by the London Academy before alluded to, dated August 8th,* 1908. Now the next statement—lines 252 to 255, inclusive, as follows: "talked violently about his inspiration—frequently went into a trance-like state, in which he talked French, and on returning to English declared that it was not he but the spirit which had been speaking." That is not true. I never said that it was "the spirit which had been speaking." What I did say was this: "What claims to be a spirit had been speaking." I never admitted the claim of my subconsciousness that it was a spirit—I hasten to say that my subconsciousness did not claim to be a spirit of the dead. My subconsciousness is non-spiritualistic, is anti-spiritualistic—my subconsciousness is opposed to spiritualism. I was careful to explain this to Dr. Starr and say "this thing (words to this effect)—this trance-utterance claims to be a spirit," or words

to that effect. I absolutely denied to Starr that I believed anything that I said in the trance, and denied it truthfully, as this literal explanation here to-day should prove. It took me years to interpret these vaporings—as I thought them—of the trance. The trance did not prove claim to be a spirit undoubtedly, but I never admitted the claim—not the spirit of a dead person. What it claimed to be I do not say—do not have to say—that would unnecessarily complicate the proceedings (I flag the "Docs"). I have touched on this when I said that when the subconsciousness presented itself to me, when my hand wrote the words: "Get a planchette" as I acted on the stock market tip of my subconsciousness and made six hundred dollars which I never got, not owing to the fault of the broker or the "X-Faculty's" knowledge of the methods of eighths on Wall Street on that occasion at all events. I refrained from saying who, or what the X-Faculty claimed to be. Now I have to remove the veil to some extent, because I have to do it, in order to develop the to-day's deposition—the word "spirit" specifically appearing in the deposition aforesaid—so I am forced to touch on it to that extent, and am frank to say that my X-Faculty, my subconsciousness, my subliminal self, put up a terrible bluff and claimed to be a spirit, which bluff I did not for one moment endorse or believe.

The next statement or allusion, line 255 through line 257, as follows: "showed the scar of a burn on his hand made by carrying a live coal at the command of the spirit." That is absolutely false and viciously so, Starr attempted to make out that I was commanded and would obey this subconsciousness of mind. I would do nothing of the sort. Now that we have reached this point in the proceedings, it is necessary for me to lift the veil a little further that shrouds—very briefly lift—the experiment with fire that I made at "The Merry Mills" in January, 1897. That was suggested to me by my subconsciousness, and when suggested, before doing it, I saw that there was something that I could get out of it irrespective of future tips on Wall Street by the X-Faculty, namely that I could get an answer to a question

which had been unanswered by scientists, nobody in the realm of science had ever answered, as aforesaid in my previous deposition, namely, whether the law of the Conservation of Energy, which runs all through nature applies to things mental, as it has been proved to apply to things material, and I wanted to know whether the Satanic self-control that I had to use, figuratively speaking, "to put a knife to my throat" three times a day when I sat down to the table, in prohibiting myself from eating what I wanted to eat, and prohibiting myself from drinking what I wanted to drink, not only wine and that sort of thing, but tea or coffee, or milk or anything on God's earth but water, or anything else but vegetables as food. That is a most hellish torment, *not torture*, I distinguish between torment and torture, but if anybody thinks that language is too strong, if any divine, for instance, thinks that the language is too strong, *let him try it!* I wanted to know whether my will power had been progressing as my self-control had been progressing. I knew what my self-control was, because it enabled me to sit down in society where oysters, soup, fish entree, roast and dessert followed each other in stately and appetizing course. Sniff the pleasing odors of the said viands, feel my mouth water, swallow the water and swallow very little else, bar vegetables—in a word, I could do what that ancient myth representing Tantalus, the ancient Greek myth—was forced to do what Tantalus did. He was a gentleman who was tormented in the lower regions by having the most delicious viands approach his lips and as he reached out to take them they vanished. The same was true of liquor. He was hungry and thirsty, but he could neither eat nor drink. I was in the same box—I had the torments of Tantalus three times a day to conquer. Eating to me became a bore, became a job, became a contest between my physical nature and my spiritual nature—a hand to hand struggle—(I flag the Docs) between wine and water, between mind and matter, between my mind and my stomach, and mind always won because I put the combat on a high plane from which if I fell I would receive a wound in my self-respect, not to say my conscience,

and I felt it would be an act of self-indulgence so gross as to come under the head of a sin if I were to eat or drink anything that my physique denied me. Be it understood that I could digest all these things that I have mentioned, but I could not assimilate them. They gave me an acute affection of a calcareous nature or chalky nature, and I felt and feel that it is not right for a person to eat or drink anything which his physical conscience prohibits: figuratively speaking, man has a physical conscience as he has a moral conscience. The moral conscience notifies him mentally, the physical conscience notifies him physically by inflaming his finger tips, not painful, but irritating him if he eats things which his physique does not assimilate. I, early in the game, early in the fight with my physical nature, decided that that was the only plane I should place this conquest on, and if I had any doubt about it, my conscience enlightened me very promptly, for my conscience pricked me if I indulged myself in eating or drinking—not to the extent of getting drunk, if it were wine, but simply to the extent of drinking a glass, for that would irritate my finger tips, not in swelling my joints, because I have not got a bit of gout in me, because I will not allow it, I will almost starve rather than have gout (I flag the Docs, "almost starve" is relative), I would emaciate myself—I am in thoroughly good case, but I had rather go healthy and be somewhat hungry than have a full stomach of what I wanted, but which did not agree with me, and have swollen limbs and hands. Having a highly educated palate, having been a club man for years and years of the best clubs of New York and Paris, I know what a good dinner is, and how it ought to be cooked, and what good wine is, and it was a tremendous deprivation to me to have to cut out eating and drinking (always in moderation), but cut it out absolutely I did as regards eating and drinking anything that I feel inclined to eat and drink. I would rather eat meats than anything else, but I have had to deny myself all that since 1893, with the exception of a certain interval to be touched on later, and make out with vegetables. I knew that it was an awful effort for me to resist the temp-

tation to eat and drink what I wanted, what I smelt when I was out in society at dinner: when I smelt coffee, I wanted to drink coffee, and when I smelt beef-steak or canvas back duck, or anything of that kind, I wanted to eat it. I knew this was an awful thing, in the way of an awful bore. I knew that conquering this awful temptation must inevitably cultivate my will power and self-control: the only question with me was *how much* had that self-control been cultivated, *to what extent* did that will power act after having been exercised for four years without relaxation of so much as a week from the summer of 1893 to January, 1897. I was therefore desirous of testing my will power, and if I found that my will power enabled me to carry out the test which I set for myself and have already described, in carrying three successive handfuls of live coals in my right hand, each handful fifteen feet without dropping a coal, without uttering a sound, and at a square "heel and toe" Madison-Square-walking-match-gait—if I could do that, I could safely infer that I had answered the hitherto unanswered question in science that *the Law of the Conservation of Energy holds good with things mental as strongly as it does with things physical;* that this mental force, the will power, *is not lost, but is stored up in the brain as a reserve force to be called upon in time of stress or danger, and whenever a person denies himself, or herself, this act of self-denial benefits that man or woman by adding to their force of will.*

I have said all this to show clearly the truthfulness of my statement, when I deny there was anything approaching a "command," I repeat again, anything approaching a "command of the spirit" or of anything else except my will power commanded that my hand take hold of the handfuls of coals and carry them without flinching, without dropping without running, without a sound, each of the three handfuls fifteen feet, and then cast them from me out of a window. on the frozen turf below—that was the only command: it was my will.

The next allusion, "Line 257 through line 259," "pointed out certain lines in a picture of the Sphinx, which he claimed

were his initials, put there in prophecy of his coming." I did nothing of the sort. I did not point out certain lines. My hands in this trance-like state made a movement over the picture vaguely, and said that my initials were to be found on the Sphinx, words to that effect. Where they were I did not know and my subconsciousness did not point out specifically where they were. The subconsciousness did say that the initials were there, and were put there in prophecy of my coming. I took this as a bluff on the part of my subconsciousness as an oracular statement, absolutely false, among other oracular statements, all of which have since been proven true. I had a photograph of this picture of the Sphinx, which was given me by Mr. Stanford White. Mr. Stanford White seems to crop up in this deposition, like Banquo's ghost will not down. It is impossible for me to go any length in this deposition without mentioning Mr. White, apparently. He has given me a photograph of the Sphinx, and which photograph of the Sphinx had the Pyramids in Egypt—"the Sphinx among the Pyramids." This photograph was sent up—some of my effects were sent to me not asked for by me—some of my effects were sent to me by Mr. White, to my cell in Bloomingdale—it may have been a year after—I took hold of this photograph, and having nothing else to do at that time, went over it with a microscope—the microscope I had gotten from Mr. White. He had bought me this microscope at my request, a very powerful pocket microscope, I have it in my pocket now, I produce it: that is the identical microscope now in the hands of Judgs Duke that Stanford White bought for me in February, 1897, or in the first part of March, and which I had in Bloomingdale and have had ever since. I took it out of my upper right hand vest pocket. It is very powerful, but very small. One day I felt inclined to wander over the surface of the Sphinx with a microscope, and strange, startling as it sounds, in the centre of the base of the stone foundation of this stone Sphinx, I found weather stains which actually made, without any far-fetchedness or favoring the thing in the slightest degree, the capital letters "J. A. C.,"

and no other letters, just capitals. The "J" a pothook J, such as old fashioned copy-books used to make; it is a "J" like an "I," it does not go below the line, but the end of the "J" curls up after reaching the line, curls up with a horizontal line bar across the top of the stem "J"; "A" is made by an angle crossed by a parallel line; and "C" is an ordinary open C, made by one line. These three initials appear on the photograph of the Sphinx, which photograph was a copy of the Sphinx; it is not a photograph of a photograph of the Sphinx; it was given to me by White, as a photograph taken in Egypt.. Of course these lines appear on the actual Sphinx, they are simply weather marks. This remark, "Put there in prophecy of his coming," was a jocular bluff on the part of the "X-Faculty," evidently thoroughly in keeping with the semi-sacro-sanct nature, of course the Book of Revelations being yanked in and a word supplied, it was not a far cry to the familiar New Testament phrase, "in prophecy of his coming," and my X-Faculty being part of myself, being my subconsciousness, is me, and being me, is like me, is identical with me, and if anybody doubts that I am a humorous individual in the way of understanding a humorous situation, I will set them right in a sonnet which will have more or less a stringent humor in it, more or less of a sting, that will make the biggest fool in New York sit up and recognize that I have a sense of humor, for I will souse him in a boiling rhyme (I flag the Docs)—that is metaphorical; I will not put him in scalding water).

The next allusion, "line 259 through line 261" "said that he saw his name carved in the marble of the mantel—said that the spirit commanded him by its voice which he heard." That is a monumental lie. There were in the marble veinings of the mantel lines purely by chance very similar to the more or less peculiar way in which I sign my initials, because, in this respect, I make my "J" with one single stroke, from well above the line to well below the line. My "A" is an ordinary round A, rather open, very open in fact, so much so that it resembles C., a round, one-line C., devoid of loop at the top. The "C," instead of being round, is absolutely

angular—it is an acute angle, it is my "C." I do this because a straight line is the shortest distance between two points, and, of course, is shorter than a curve, and I can get a quicker effect with an angular "C," a far quicker effect, than I could get with a round "C"; I therefore make an angular "C." In signing my name, I make an utterly different "C." I make a conventional, one-line "C"—by "one-line "C" I mean a "C" devoid of loop at the top, and a loop at the bottom, a species of "C" which takes no more time than necessary to make "C" as above, these loops can be dispensed with without interfering with the legibility. I had not noticed these lines in the marble until I went into this trance-like state; my X-Faculty evidently had, for in the trance-like state, it pointed, using my hand, and said, "There are your initials," or words to that effect, and that was news to me because I had never seen them before, just happpened not to see—that is psychologically interesting, because it shows that this clairvoyant faculty is not only profitable—it sees more in a room than the owner of this clairvoyant faculty *without the use of this clairvoyant faculty.* This rot about saying, as it said here in "Line 211," "the spirit commanded me by its voice," I have already disproved. I deny that there is any command in it except the command of my will when O. K.'d by my judgment. My will does not act until my judgment has O. K.'d it. And there is another absurd statement in this line after saying" said the spirit commanded him by its voice," in the words which he heard. That is a monstrously false statement because it lies about a truth. I heard a voice—*it was my own voice*, and everybody in the room heard it; it was my voice, it was not "its" voice. It says here, "the spirit commanded him by its voice." The voice was my voice and it was my subconsciousness which was using my vocal organs, what is known as vocal automatism which is always used in trance utterances, in other words, automatic talk, like talking in one's sleep.

"Line 262 and 263," "said that he was immortal and that nothing could harm him"—that was said, both these were said, but they were said in a clairvoyant utterance, and that

was an indication, using the word "immortal," a clairvoyant prognostication that I would acknowledge my belief in the immortality of the soul, which I have done in this deposition, which is done in my philosophical, scientific brochure, in evidence here, entitled "The X-Faculty, or the Pythagorean Triangle of Psychology." The words "and that nothing could harm him," alluded to a deadly attack that was to take place on me, and did take place, but which I, by strength and good fortune foiled—an attack on me in my cell by my said big Irish keeper, ex-guardsman. He tried to strangle me after I had called him down for continued drunkenness and impertinence. That will be touched on at the proper time. That was evidently a clairvoyant utterance, since all these have been proved to be true and clairvoyant.

"Line 263. Thus excusing himself for exposure to cold" and "Line 264" neglecting ordinary clothing and going in bare feet"—I have already touched on that in the previous deposition, and shall content myself by saying that this is a nasty lie by Starr, who sneaked in on me on one occasion when I was going to my bathroom to take a bath, had not yet taken my bath and intended doing it. The bathroom was connected with my bedroom at the Hotel Kensington, and I had my bare feet in my slippers—I do not wear rubber boots when I take a bath—and that is what he exaggerated into this fine sounding phrase, "thus excusing himself for exposure to cold" and "neglecting ordinary clothing, going in bare feet—a regular iniquitous lie that.

"Line 265" is blank.

"Line 266 to 268—we find this: a small "b" in italics, this is a printed "b" and what follows is "other facts indicating insanity, including those communicated to me by others as follows: (Line 267), State what, if any, significant change there has been in the patient's disposition, mental condition, business or social habits, or bodily health." And "Lines 269 to 275: "His valet, who has been with him fourteen years, described the gradual development of this delusion of his being inspired, and says it has made him to do many insane

acts. He has become suspicious of his friends; has secluded himelf, and has been neglecting his food, hence has become thin and anemic."

"Lines 275 and 276," the following printed words: No. 4, That the facts stated and information contained in this certificate are true to the best of my knowledge and belief." Then "Lines 277 and 278." On Lines 277, the written word "sign'" in brackets "M. Allen Starr," opposite "M. D.", standing for "Doctor." On Line 278, the same word, "signed" being represented by a ditto sign in brackets, and then follows the name of Dr. X, with Line 279, "Severally subscribed and sworn to before me this 10th" (Line 280) "day of March, 1897." Line 281, "Signed," written out and enclosed in brackets, and then "H. A. Gildersleeve," and Line 282, "J. S. C.", which stands for "Judge of Supreme Court."

This valet visited me in my cell several times—was sent there by Stanford White, into whose service he at once went on leaving mine, and he told me—he denied, as I have mentioned in my letter to Capt. Woods, written in 1897, in the following words, to the following effect: "I didn't describe no gradual development of no delusion, for I didn't see none." Now, what this valet may say after the death of White, and after the publication of "Four Years Behind the Bars," I know not. The valet was a perfectly common man, an utterly illiterate man whom I took off the farm— a farm I had and own now, known as "Sipperly" of some hundred acres, more or less, at Tarry-town-on-Hudson. His father and mother lived on this place, and he was a boy there, and I took him as a boy and, so to speak, turned him out as a valet. Eventually I had him taught typewriting, but he never was anything more than a valet who could typewrite and spell, more or less with the help of the dictionary; he never was a secretary; he never had control of my letters, or kept files, or anything of that sort. He looked after my clothes and blacked my boots and that sort of thing, and also pounded the typewriter. He had been impudent to me shortly before White and Dr. X. came down from New York, and I threatened to discharge him. When a threat like that

is presented it is usually preliminary to a discharge, because no servant is impudent unless he is prepared to get a discharge, so to speak, pick a quarrel with me, because I firmly believe he had been tampered with by White. White was rich and could take him from the country and give him a post of typewriter in his office, and have him enjoy the delights of a city, instead of being in the seclusion of the country, and White had communicated with him because he knew that White and X. were coming, for he let White and X. into my house and showed them the way into the dining-room, where they found me. He at once, as soon as I went to Bloomingdale, instantly went into White's employ and staid with White until White's death, and whether he is going, if he is called on the stand, to tell the truth, or whether he is going to perjure himself like all the other side's witnesses, of course I, not being a prophet, cannot say. I do not attempt to say, I do say, as I wrote to Woods fifteen years ago, come next July, in that letter to Woods, words to this effect: "the valet in question denied to me in my cell the above allegation in the following inelegant but explicit language": 'I didn't describe no gradual development of no delusion because I didn't see none."

So much for this tissue of lies, this murderous tissue of lies of perjury upon the part of Moses A. Starr in the commitment papers.

EXHIBIT I.

OPENING SPEECHES OF HON. F. A. WARE AND JOSEPH H. CHOATE, JR., IN CHALONER vs. SHERMAN, FEBBRURY, 1912.

UNITED STATES DISTRICT COURT.

Southern District of New York.

Before Hon. George C. Holt, J., and a Jury.

JOHN ARMSTRONG CHALONER
VS.
THOMAS T. SHERMAN.

New York, February 19, 1912.

APPEARANCES:

WILLIAM D. REED, Attorney for Plaintiff;
HUGH GORDON MILLER, FREDERICK A. WARE, W. GILMER DUNN } Of Counsel.

EVARTS, CHOATE & SHERMAN, Attorneys for Defendant
JOSEPH H. CHOATE, JR., and JOHN G. MILBURN. } Of Counsel.

A jury was impanelled and sworn.

Mr. Ware opens the case to the jury on behalf of the plaintiff, as follows:

Mr. Ware: If Your Honor pleases, Mr. Foreman and Gentlemen of the Jury: As the counsel for defendant in

this case has well stated, we shall present evidence to you which would indicate that a gigantic conspiracy has existed and did exist which resulted in the incarceration of this plaintiff, Mr. John Armstrong Chaloner.

Mr. Ware: That is his legal, lawful name. Now, gentlemen, it is just fifteen years ago that 13th day of this month, that Mr. Chaloner, the plaintiff in this action, was lured from his Virginia home, and the infernal program begun that terminates in this present proceeding. We have often heard the old adage, "Truth is stranger than fiction," and fiction, as presented by Charles Reade, as some of you gentlemen may remember, in "Hard Cash," is somewhat along the line, but not the reality which you will encounter in this case. The story of Mr. Chaloner's persecutions unfolds, as he so well and completely tells in his own deposition, and you gentlemen will find it hard to believe that in our day and time such things are possible. You cannot restore the years of suffering and oppression that he has endured, you cannot give him back the four years that he passed behind the bars of Bloomingdale, but you can give him what belongs to him, and you can wipe out the stigma that his own brothers have sought to fasten upon him, for reasons which will be fully explained, and rightly understood. Mr. Chaloner is a man that did things. He was the oldest son and the head of the family, in all that it implies, after his father's death, and he was ambitious. He looked up the resources of the South at the time of the Cleveland panic, and he found at a place called Roanoke Rapids, finally, in North Carolina, a great water power and great possibilities, and I understand to-day that that place, which was a wilderness, practically, when Mr. Chaloner first went there, is now a flourishing city of some 12,000 inhabitants. He is a man who has spent a great portion of the time after he left Bloomingdale in literary work; he has become known as an educator, he has taught through "Chaloner on Lunacy" the fact that the lunacy laws of the world, and particularly of the various States, or nearly all of them in this country

are a libel on the name of law. He will show you gentlem in that book which is one of the exhibits in this case, that this State particularly—and we deal particularly with th State—that any man, or woman, for that matter, no matt whether they be geniuses, business man, or any one of gentlemen, can be on proper medical certificate, arreste and without ever having opportunity to go before a poli magistrate or a judge of any court, taken up to whatev asylum it suits those who desire us committed, to have sent to; and then, gentlemen, in Mr. Chaloner's case demonstrated the fact that after nearly four years he had take what is known commonly as French leave, he escape and if that is not a traevsty upon justice, and if that do not show, as we believe it does, and will ask you gentleme to share that belief, if that does not show that the presen lunacy laws in this State are ridiculous—it is done ever day, gentlemen. In this particular case it is uncontradicte Mr. Chaloner took a great deal of interest in scientific experi ments during the latter years of his life, and in fact that one of the alleged causes of his incarceration, because he a scientist. He takes an interest in scientific investigatio and experiment, and those very investigations, gentlemen were made part and parcel of his alleged lunacy. At th present time, and for the past ten years, he has been con ducting a plantation, as it is called down there, a large farm and conducting it on business principles. He raises blooded stock, he does the various acts that the people engaged i farming in that country do, and as we shall show later, h enjoys the universal respect and confidence and affection o the entire community. Meantime, he belongs to the variou social clubs of that part of the country, is a member of the Westmoreland Club of Richmond, Virginia, one of the most exclusive clubs of the exclusive South.

Mr. Choate: May I ask Your Honor what possible relevancy this can have in an action predicated upon conversion?

The Court: I think counsel should be permitted to open the case in his own way. I call his attention to the

fact that the function of an opening is to state the facts clearly, so that the jury will understand the bearing of the evidence. It is not usual to make the opening very elaborate, or in the nature of an argument of the case, but simply to state the situation so that the evidence will be understood by the jury. When you get the evidence in is the time to argue upon it. Counsel may be left upon his professional responsibility to open the case in a way which he thinks most desirable to his clients.

Mr. Ware: I want to show that the plaintiff is competent.

The Court: Proceed.

Mr. Ware: In the meantime, gentlemen, during his literary duties, which incidentally include a history of his case—at least a history of his experience at Bloomingdale, entitled "Four Years Behind the Bars of Bloomingdale," which book is also one of the exhibits in this case, and which we claim is very material, as showing his ability now and always to take care of himself and his own affairs. Not only that, that he is an exceptionally brilliant man, because a man that can indulge in literary work, and in the meantime act as his own chief counsel in a court of law in a litigation of this nature, and conduct his business meanwhile, is a man out of the ordinary; and although we don't have to show that, we wish you gentlemen incidentally to know the kind of man that has been treated in this case, as this plaintiff has been treated. He has started a newspaper in the South called "The Confederacy and Solid South." That, gentlemen, I do not believe is an indication of incompetency. We have here the absurd situation of Mr. Chaloner having been declared insane in his State, that is the State of New York, where incidentally he had no chance to be heard, never brought before a jury, had no notice, had none of the formalities with which the law and the Constitution of these United States is supposed to surround our liberty. The facts speaking for themselves, but, gentlemen, he comes before us with a different and vital distinction, that in New York he was tried *in absentia*, not only was not produced before the Sheriff's Jury,

not one of them had said one word to him, or ever had seen him. There was nothing to prevent any member of that Sheriff's Jury, gentlemen, from satisfying himself as to the sanity of this man, not while Mr. Chaloner was at White Plains and the Sheriff's Jury was sitting twenty miles away in this City of New York, and calmly disposing of him and incidentally of his property. A man convicted of murder, under our laws, may forfeit his life or be committed to prison for life, but either of these fates, gentlemen, is better than being committed for life, as Chaloner was, to a madhouse. He was accused by these so-called alienists of suffering from paranoia, and the modern acceptance of that term is a disease of the mind which is progressive and incurable; and, gentlemen, we will submit to you that a man who had paranoia in 1897, when this man was committed as insane, would either be dead or a raving maniac long before to-day. A sane person confined amid those surroundings, gentlemen, may become insane, and sane people have been, in the hope that they would become insane, and the more powerful or wealthy, which is about the same thing these days, those desiring the commitment of any person, the more certain the fate of the unfortunate.

The Court: You are not speaking on facts which are involved in this case. These general observations are very proper when your evidence is in. The proper proceeding in opening is to state to the jury the facts in the case, not general observations about insanity.

Mr. Ware: All right, sir, although it seems to me, I respectfully—

The Court: Within any liberal bounds, reasonable bounds, you can present your case in your own way, but this is not the time for general argumentation about the law of insanity in general. The question is, what has occurred in this case that is to be shown.

Mr. Ware: All right, Your Honor, Mr. John Armstrong Chaloner, resided in 1894, at the Merry Mills, Cobham, Albemarle County, Virginia. As I have stated, he is a lawyer, a law writer and a publicist. He is the author of a number

of literary works, some of which I have stated, and in addition a poetical work which he terms "Scorpio," which consists of a collection of Shakesperian sonnets, and incidentally he is the author of a brief and appendix which is submitted in this case. He went to school in Washington, D. C., where his father was a Congressman for a number of years, a well known man, and after he got a little older he went under a tutor, Mr. William H. Wilson, a very learned man. From there he went to St. John's Military Academy at Ossining on the Hudson, where he passed with honors and received the highest prize in that school out of some seventy-five boys, in declamation. I mention this, gentlemen, because I believe it is pertinent for you to know the history of this man, and that he has been not only a brilliant man, but that he was a bright boy. He went to Rugby, England, at thirteen. He had plenty of athletics; he was the full-back of his house, a position, gentlemen, if any of you know anything about football, you will admit requires a good deal of skill and judgment, because the full-back is the man who watches the whole game, and fills up the interstices which are left when somebody else does not attend to their duties. He had a tutor, Mr. Simmons, and he was admitted to Columbia without conditions. He skipped a class. Now, gentlemen, that is somewhat out of the ordinary in a college course. Sometime during this period or a little prior thereto, he had an altercation with one of his brothers, Winthrop Astor Chanler, and received a wound on his knee at that time, which was a serious one, and which evidently Mr. Chaloner has not forgotten since. He attended the Columbia Law School. It only took him three years to get his Bachelor of Arts. He then served in the post-graduate department for another year, and was made Master of Arts. He was admitted to the bar in 1885 at Poughkeepsie, where he then resided, or in that neighborhood. Mr. Chaloner then traveled extensively, Mexico, West Indies, South America, and prior to that, throughout the West, then crossing the Isthmus he went to Ecuador, and Quito, and over the Andes. Subsequent to that he went to Europe in 1886 or 1887; he studied art in

Paris, roomed with a cousin once removed, Arthur Astor Carey, with whom he parted on disagreeable terms. This Arthur Astor Carey with whom he parted at that time after some disagreement, is one of the three gentlemen who committed Mr. Chaloner in 1897, or who made the petition requesting such committal. At that time he studied art and took a great deal of interest in it. He studied at that time a year in Paris, returned to Newport, Rhode Island, in 1887, where he took a house with two friends and opened bachelor quarters, where he met his wife, or the lady that he married, and has since been divorced from, who at that time was known as Amelie Rives. She was a Virginia young lady, artistic, and of great literary capacity, as some of you may remember; and they were married June 14, 1888. Only one member of his family, of his brothers and sisters, was invited to the wedding at the time, and that seems, gentlemen, to have been very instrumental in the breach which widened ever after. His brothers and sisters, which you will see in letters will be introduced in evidence were very much disappointed and very angry because they had not been invited to this wedding. The principal reason that his family were not invited at that time was that his brother Winthrop Astor Chanler had sent a copy of the book "The Quick or the Dead" to Mr. Chaloner with marginal notes, and those notes, gentlemen, were very unpleasant to a sensitive lady, the authoress, and doubly so to the man who had sworn to love, honor and protect her, or was about to, and consequently he did not feel as if his own brothers and sisters and wife would be congenial companions under those circumstances. In 1889 he sailed for Paris with Mrs. Chaloner, to enable her to perfect herself in painting. They returned in 1891, and in 1891 he conceived the idea of the Paris Prize Art Fund. That was a proposition to enable needy and artistic Americans who were desiring to perfect themselves in the various phases of the beaux arts, to go to Paris and enjoy the privileges of an education in that city, which practically is the headquarters of matters artistic, particularly in painting and sculpture. Mr. Chaloner went to a number of his friends here in this country and tried to

get funds. He got a little money, he got some in Boston, less in New York, and none to speak of anywhere else, but he put in some $13,000 of his own money, in order to carry through this most admirable, and I might say, patriotic idea. That art fund, the Paris Prize Art Fund exists to-day, as I understand it, and his good work at that time has borne wonderful fruit. In 1892 he started the law firm of Chaloner, Maxwell & Philip, 120 Broadway. Would your Honor care if I stated the clubs he belonged to at that time?

The Court: I have no objection. It is proper if you state what he has done.

Mr. Ware: At that time he belonged in this city to the Metropolitan, the Century, Democratic, St. Anthony, Delta Psi, Players, Manhattan, University Athletic, Racquet and Tennis Clubs; the New York Athletic Club, Knickerbocker Club, of this city, the St. Bartolph Literary Club of Boston, Massachusetts and the Metropolitan Club of Washington, D. C., which, as you gentlemen probably remember, is the acme of social life in the capital of this country. He resided in New York during that period, and up until 1893 practically, although he had spent a great deal of his time with his wife, who was a Virginian, in the State of Virginia. She came from a place, a house called Castle Hill, which is within three or four miles of his present residence at Cobham, Virginia. His time was spent, as you would say, traveling around the world in various countries, in Virginia with his wife, and generally the life of a cosmopolitan. He voted in New York for Cleveland, and in fact was on Cleveland's campaign committee. In 1893 and 1894, at the time he was investigating from Washington the various opportunities that presented subsequent to the panic that ensued upon Cleveland's last term, and there were great opportunities in those days, and as a frugal business man he took advantage of them—he dicovered this water power at Roanoke Rapids, and started the Roanoke Rapids Power Company, and the other companies, which were the pets, practically, which he looked forward to to develop his, at that time, modest fortune, into a great one. In 1894, in the early spring, he bought

the Merry Mills, where he now lives, and in that year he and his wife Amelie Rives agreed to disagree, and in 1895 Mrs. Chaloner went to Los Angeles to perfect her divorce, and in 1895 he went to Roanoke Rapids—prior to that he had lived in Virginia in 1894—in 1895 he went to North Carolina because his business interests there required all his time and attention. He stayed at Roanoke Rapids until the Princess Troubetzkoy, who was Amelie Rives—after her divorce she married a gentlemen named Prince Troubetzkoy, a Russian, and he waited in North Carolina until the Princess and her husband had left the State of Virginia, when he returned to Cobham. I want to say right here, gentlemen, that in the spring, April 28, 1896, Mr. Chaloner, who had been assessed that year for a personal tax of $10,000, went to the Bureau of Personal Taxes here in this city, and in his own handwriting made a statement which conclusively shows that he had no idea then or thereafter of remaining in this State as a resident, and was not at that time. He said then, in his own handwriting, April 28, 1896, nearly a year before he was taken to "Bloomingdale," "I practice law here and devote my time"—

Mr. Choate: I object to this being read before it is proved.

Mr. Miller: It is an opening statement—

Mr. Ware: We are going to prove it.

The Court: I think counsel may read documents on their professional responsibility not to read any document as to which there is any doubt as to its admissibility in evidence. If counsel thinks it is admissible, it may be read to the jury.

Mr. Ware: This document we claim is most relevant and material.

The Court: Proceed.

Mr. Ware: "I practice law here and devote my time to an enterprise in North Carolina. I have no intention of resuming my residence here. I claim that I am not taxable here, but nevertheless consent to an assessment of $2,500. My

residence is Cobham, Virginia. John Armstrong Chaloner." Now gentlemen, I won't comment further on that at this time. It speaks for itself. About this time, or in 1894, Mr. Chaloner bought an estate in Virginia, the Morris estate, in Louisa County, for $13,000 cash and $12,000 mortgage. It consisted of 2,700 acres and a large house, and has since become extremely valuable, although it has passed out of Mr. Chaloner's hands, unfortunately. He bought that piece of property at a tremendous business bargain. He happened to have some money, and he saw a splendid opportunity, but the fortune, through subsequent developments and his subsequent treatment, has been lost to him. Now, gentlemen, in 1888 he received a letter from Winthrop Astor Chanler, immediately after his marriage, and on June 27th, a letter from him to Mr. Winthrop Chanler, personally delivered to Winthrop Astor Chanler, in New York, on the steps of Mr. Rutherford Stuyvesant's house, answering Mr. Winthrop Chanler's letter. I shall not read these letters at this time. They will be read in evidence and they will be presented to you gentlemen for your consideration. These are the letters I have previously referred to, and the letters that served to widen the breach that was already becoming impassable.

Mr. Chaloner's family came from rather peculiar stock, in this sense that they are a mixture of the North and South. The Chaloners themselves are a family from Charleston, South Carolina, and they married into the Astor family, and other strains are Governor Winthrop, the first Governor of Massachusetts, and Peter Stuyvesant, the last Dutch Governor of New Amsterdam, which is the former name of our town, as you gentlemen know, Mr. Chaloner inherited the warm, generous, trusting blood of his Southern ancestors, and all his conduct throughout this case, gentlemen, indicates that fact. Now, we come to the crux of the situation. On December 4, 1896, a directors meeting of the Roanoke Rapids Power Company was held at the Hotel Kensington here in New York. Recollect that is only two months before he was brought up here, and we have Exhibit M, a copy of the

minutes will be presented to you gentlemen. At that time Mr. Chaloner, that is John Armstrong Chaloner, and his brother Winthrop Astor Chanler, had a quarrel as to how that company should be conducted. Mr. Winthrop Astor Chanler at that time was the President at a salary of some $2,000 a year, and during the course of this quarrel—and Mr. Winthrop Astor Chanler's deposition supports every word of this statement—he advanced threateningly upon Mr. John Armstrong Chaloner, who was lying in bed, because he was not in good physical health on that day, or at least was reclining on his bed, and raised his fist, his clinched fist to strike his brother. John Armstrong Chaloner, in bed and defenceless, sat up, and the situation, before any blows were struck, appealed to the others in the room, and Winthrop Astor Chanler was dragged away, or t[illegible]en away; but that quarrel, gentlemen, was the culmination of years of feeling, and this very man, Winthrop Astor Chanler, years before that, had struck and severely injured his brother. The upshot of it was that John Armstrong Chaloner called a meeting of the same company, in which he had the controlling interest, and deposed his brother from presidency. That was the last blow, as far as Mr. Chaloner was in a position to inflict it. He did not feel that his brother was a proper person to be president of that important Company, and he had himself elected, because he had the greatest interest and was the natural person to take charge of its affairs, he was elected president. Now that, gentlemen, was in the early part, in January, as I recall, of 1897. Mr. Winthrop Astor Chanler at that time wanted to rent a saw mill from the Roanoke Rapids Power Company at a very small price, and John Armstrong Chaloner demanded an accounting of the estate, so writing to all directors that he did not impute any dishonesty to his executors, but desired better business management. Now, that is position No. 2, 3, or 4, gentlemen, because they have been multiplying. Mr. John Armstrong Chaloner was one of the executors of his father's estate, but he never qualified, and his two brothers were the executors in his place and stead, and for five, or possibly ten years, there had been

no accounting, so that when John Armstrong Chaloner said he was going to demand an accounting, the quarrel became almost insignificant, because here the honesty, practically, they assumed, of their administration of the estate was impugned. Mr. Chaloner says that he had no such intention, but as a matter of business comity thought there should be accountings oftener than there had been. There was only one accounting in ten years, as he states. At the time of the directors meeting Mr. John Armstrong Chaloner had written a will leaving practically his entire estate to the University of Virginia, excepting certain legacies from income to St. Margaret's Home, an institution in Dutchess County which his father had asked him to perpetuate and care for, and which he had always so done. At that time, gentlemen, he arranged for the building of 298 Broadway, which is only two blocks from where we now stand, a house he has never seen, because it was built subsequent to his arrival in New York, or at least he never had an opportunity of stopping to look it over, in that building he set apart a part of the ownership so that the St. Margaret's Home legacy would be properly protected. I believe that I spoke to you, gentlemen, about the will which he had made, which practically disinherited his brothers and sisters, all but one. We will show, gentlemen, that that condition existed, and you can draw your own inferences as to whether that would cement any particular friendliness between these brothers and sisters. He had loaned about $30,000 to this United Industrial Company to make up a deficit, in fact he was the financial discoverer of these possibilities of the South at Roanoke Rapids, and he did all he could, and did everything that was necessary, to foster and promote this enterprise. He met Mr. Stanford White in 1892, at some opening of a health resort at Cumberland Gap, and the acquaintance made at that time ripened into what Mr. Chaloner fondly supposed was a friendship on the part of Stanford White for him. He had a genuine friendship for Stanford White, as in fact for everybody that he came in contact with, and with whom he pro-

fessed friendship. They had several fallings out, and toward the latter part of 1896 Mr. Stanford White arrived at Cobham, Virginia, and his greeting was a very peculiar and unpleasant one to Mr. Chaloner, because Mr. Chaloner had friendship for his friends, and Stanford White came up that fall, and his greeting began "What the hell," etc., referring to Chaloner's living in Virginia, and Chaloner went on to state after he had recovered his composure and got over the shock of being greeted in this way from his supposed friend, that he lived there because he enjoyed the life; but that was the opening which Stanford White was trying to make to sow dissatisfaction in Mr. Chaloner's mind. In 1896, in October, his sister Alida Beekman Chanler, married a Mr. Temple Emmet, but Mr. Chaloner did not attend, himself, on this occasion. He sent a very handsome present instead, but he didn't go there because he didn't desire to meet some of the male members of his family, particularly, with whom he had had fallings out, and I want to say here at this time, another brother, Colonel William Astor Chanler, during these years and for some years before and after, was the proprietor of a racing stable, and among other horses which he raced in this vicinity was one named Salvacea; and after the directors meeting, I think it was, he and Mr. John Armstrong Chaloner were going south in a drawing room car of a train, and Mr. John Armstrong Chaloner called his brother's attention to a newspaper article which criticised the running of this horse Salvacea, and practically accused the owner and trainer of Salvacea of having pulled the horse, committed a fraud upon the public, and Mr. John Armstrong Chaloner was indignant, and called the matter to his brother's attention, and his brother smiled and intimated that that was not far out of the way, possibly; that such things happened on the race track; and one word led to another, and John Armstrong Chaloner denounced his brother that such a condition of affairs could be imputed to him in any way, that he did not sue the papers for libel, and did not defend his good name and the name of Chanler, and they took opposite ends of

the car and spoke no more for many years. I submit, gentlemen, that that little incident may have some bearing upon the attitude of Colonel William Astor Chanler, who had been practically accused by his brother.

Now, the firm of Chaloner, Maxwell & Philip, was formed by Mr. Chaloner, Mr. Maxwell and Mr. Philip, for their mutual benefit. Mr. Chaloner allowed a liberal bonus to the partners, and they attended to the details of his business. In other words, Mr. Chaloner at that time did not take any active interest in law, but he had extensive financial interests, and he had many wealthy friends, and he was the head of the firm, and the other two men transacted such other business as came into the firm, and incidentally transacted Mr. Chaloner's business, Mr. John Armstrong Chaloner's. It was mutually successful, because it was admirably adapted, not only to assist Mr. Chaloner, but these other men, who were practically unknown in New York at the time. It consisted of Mr. Chaloner, who had property interests and family prestige, and big capital behind him, Mr. Maxwell, who was a corporation and mercantile lawyer, and an expert in water power, and in the knitting goods business, in which a brother of Mr. Maxwell was very prominent, and Mr. Philip, an expert patent lawyer. I want to say at this time that Mr. Chaloner had met Mr. Philip, through an invention of Mr. John Armstrong Chaloner of a patent roadway,* which Mr. Philip had secured a patent for, and Mr. Chaloner's mind ran somewhat on devising patents and ideas, and here was Mr. Maxwell, a corporation and mercantile lawyer and Mr. Philip an expert patent lawyer, who, with Mr. Chaloner, certainly proved a most expert vehicle for the transaction of the law, particularly the law that Mr. Chaloner wanted transacted.

Now, gentlemen, does Mr. Chaloner's action in associating with him, an expert patent lawyer and a mercantile and corporation lawyer who was also an expert in water power

*Which was laid down at one of the principal entrances to the Fair Grounds, inside the grounds, and awarded the highest prize at the Chicago World's Fair in 1893.

affairs, did that indicate incompetency on the part of Mr. Chaloner? Mr. Chaloner paid them $1,500 each at the start, a year. Subsequently Mr. Chaloner secured a millionaire client, I believe it was Mr. Carey, rented a $2,400 office at the Equitable Building, and raised their allowance to approximately $3,000 each. That does not indicate incompetency, gentlemen. Mr. Chaloner gave up all share in the $6,000 annually paid by this wealthy client, and allowed his partners to divide it equally. Under the original agreement Mr. Chaloner was to have all his legal business attended to free by his two partners. Hardly incompetence. That was a fair and liberal arrangement on the part of Mr. Chaloner. Now, gentlemen, we get down to the crux of the situation, when the Mephistopheles of this combination, and I use the term advisedly, Mr. Stanford White, went to Cobham, Virginia, with a Dr. Fuller, for the purpose of getting this Virginian out of his retirement, off his farm, where he was enjoying himself in his own way, with his stock and his neighboring enterprises, and while Mr. Winthrop Astor Chanler hovered in the rear this brother, one of the committing Chanlers, went down on the train with Stanford White, and with this so-called alienist, Dr. Fuller, and Stanford White and Dr. Fuller went into Chaloner's unannounced, took him practically by surprise, although Stanford White had sent a telegram some days before, saying that he was coming, but Chaloner did not know just when he was coming, and by specious arguments, Mr. White, who was a very persuasive man, induced Mr. John Armstrong Chaloner to believe that a few weeks in New York would be a good thing to relieve the tedium of country life. Unfortunately for Mr. Chaloner, he believed, he fell, and he was taken to the depot and put aboard the train like a chattel and brought to New York, and all the time Winthrop Astor Chanler was on the train to see that his underling, Stanford White had been deputed to do the dirty work, did his part of the errand properly and successfully. At that time, gentlemen, I want to say advisedly, that the confederate of the New York contingent was one Hartnett, who was Chaloner's valet, and Hartnett

was the one who kept them informed of the proper time to come and what to do, and how to do it; and Hartnett, when poor Chaloner was taken up to Bloomingdale, was the man who transferred his allegiance which, of course, always had been allegiance to Stanford White, he went openly into Stanford White's employ, but with the peculiar distinction, gentlemen, that you will find that by an account which Stanford White subsequently presented, John Armstrong Chaloner paid the bills of the valet, and also you will see by that same account, that Dr. Fuller, who received several sums for his short service, possibly a day and a half for the trip to Cobham, Virginia, and back, received $1,000 from Stanford White out of John Armstrong Chaloner's money. Could anything be more beautiful than that, gentlemen? They got him to New York, he went to the Hotel Kensington, and then the plot developed. Dr. Moses Allen Starr here comes upon the scene. He and Dr. Fuller made the affidavits on which Mr. Chaloner was committed to Bloomingdale in 1897. And now, gentlemen, on those affidavits and on that petition, I want to call your attention at this time, that you will see that Mr. Winthrop Astor Chanler, and Lewis Stuyvesant Chanler, and Arthur Astor Carey, said that Mr. John Armstrong Chaloner for several months at his home in Cobham, Virginia—incidentally they even admit that that was his home—had been acting queerly, etc., and I want to call your attention to the fact, that Mr. Winthrop Astor Chanler, in his deposition, admits or states that he never crossed the threshold of Mr. Chaloner's home at Cobham, Virginia, "The Merry Mills," and Lewis Stuyvesant Chanler, for months before had been abroad, and only came back, was on the sea at that time, and only came back in order to sign the petition, and Arthur Astor Carey had never been in Virginia, as I understand it, and had not seen Chaloner for years; and yet these two loving brothers and this cousin, who is now a Swedenborgian clergyman, declare in the petition that of their own knowledge, Mr. Chaloner had been doing these various acts which they invented. The fact is that none of them had ever crossed the threshold of Mr. Chaloner's door,

unless, possibly, when Mr. Winthrop Astor Chanler w down there he might have surreptitiously sneaked in the ba door when Chaloner wasn't looking, but it was only a sho time that he was down there when he went down there take Chaloner to New York, or watch Stanford White d it, and I don't believe he left the train, or if he did probably did not leave the depot. John Armstrong Cha oner has charged perjury, and that is the only word, gentl men, that he uses in the matter. He believes in calling spade a spade, and if there is any other word fits the situ tion I will use that. While staying at the Hotel Kensingto at this time just prior to the commitment, Mr. Chaloner we to Manhattan Club. He spent a good deal of his time the Manhattan Club in New York, went to the theatres i the evening, played pool at the club after the theatre occ sionally, was under no restraint whatever. Now, on this ce tificate of Judge Gildersleeve in this proceeding—he di pensed with personal service on the grounds that it woul be dangerous to Mr. Chaloner and dangerous to every o else concerned to have Mr. Chaloner brought before him. U to that time Mr. Chaloner had never been dangerous to a living being. He had spent a great deal of his life in doi good to other people, not in doing harm. He had never inte tionally harmed a fly, and yet a judge of the Supreme Cou of this State omitted to see Mr. Chaloner because he believe or apparently believed, the statements that had been made him as to Chaloner being a dangerous man. Chaloner h no notice at this time, gentlemen, of the nature of these pr ceedings. Personally, I believe that he thought it was cruel, practical joke that everything would be straighten out in two or three days. It took nearly four years straighten it out, and then he had to straighten out himself. He was alone most of this time whi he was living at the Hotel Kensington. Now, gentl men, in this petition of 1897, we find some of the most gla ing misstatements that it seems incredible that ever an e pert witness should indulge in such false, ridiculous prevar cations. For instance, the certificate of lunacy states, D

Fuller and Dr. Starr made this, that Mr. Chaloner was confined at Neuilly, near Paris, France, which Mr. Chaloner characterizes as an absolute and grotesque lie. It seems there is some place near Paris called Neuilly, some point where they have baths, and some friend of Mr. Chaloner's, some acquaintance that he knew, and Miss Amelie Rives, his wife, deposes to this, because she was in Paris with him at the time, that he met some friend, and the friend was stopping at Longchamps, or some nearby suburb of Paris, and invited him to dinner, and Mr. Chaloner occasionally went to Neuilly to take the baths, which are probably similar to the hot baths, or the baths at various health resorts here in this country, which probably are as much a fad as anything else, whether or not they were efficacious to help Mr. Chaloner; in any event, he took these baths, absolutely voluntarily, walked over there in the morning, as his wife deposes, and came back at night; and the statement that he was confined there in any sort of an institution is, as Mr. Chaloner says, an absolute and grotesque lie. It may seem strange that such a lie could be uttered and no one contradict it, but Mr. Chaloner was in Bloomingdale. Now, another alleged delusion was as to the color of his eyes having changed. Well, gentlemen, that is not an exceptional case, but it is the absolute truth that the color of Mr. Chaloner's eyes has changed and changed very decidedly. In "The Quick or the Dead" Mr. Chaloner, who was used by Miss Amelie Rives to personify the hero of that story, although he disclaims that the resemblance goes any further, his eyes are described by Miss Amelie Rives as of the color of pools in the woods in the autumn, and the brown leaves in the pools give that water a brownish color, and his eyes were a sparkling brown at that time. His eyes now have completely changed in color to a sort of gray. But in her deposition, which will be presented to you gentlemen, his then wife, states absolutely and without reserve that that was the color of his eyes when she knew him, and we will show that that is not the color of his eyes now, so that that is as near a delusion as these eminent alienists get, and incidentally they posed at this time as ocu-

lists, and under pretense of examining his eyes, were getting ready their deposition of the change in the color of his eyes, which seemed to them an excellent hook on which to hang what little shred of a case they had. It further says that this was done by a spirit that acted upon and through him, and that he was inspired to lead a holy war in Europe. Mr. Chaloner says that is utterly false and ridiculous, preposterous. Now, gentlemen, if those were his delusions at that time, and he was a paranoiac, he would not deny them now. It says he talked volubly about inspiration. He says this is false. There is just one small matter, gentlemen, small in the light of scientific development, small now, because in the last fifteen years science has made great strides, and no one can tell where it will stop, he did admit that he had gone into a trance, that he had gone into a trance state. He repeatedly says that he has no belief whatever in spiritualism, utterly repudiates it, but he does say that he believes, and maybe there are others, gentlemen, that there are things in this world, in heaven and earth that have not yet been fully discovered or analyzed or explained, and he did apparently go into a trance state. I say apparently, because it was apparent to those who looked at him. Now, it would not make a bit of difference so far as man's sanity was concerned, whether he went into a trance state or not. We know that there are many, many others. We have public exhibitions in this city, but people are not arrested because they go into a trance. He did on one occasion carry live coals in his hands, and gentlemen, that experiment, which he did purely in a scientific mood, and which he says he would not repeat for a million dollars, was simply to demonstrate to himself just what his own powers of self-control were. He did walk to the window with those coals in his hand, and he threw them out as soon as he had arrived there, and he demonstrated to himself that he could stand great pain; and, gentlemen, when he got to Bloomingdale, that experiment stood him in good stead, it showed him that the human body is capable of tortures far more severe than carrying live coals in their hands, the tortures of being surrounded by maniacs that occasion-

ally are committed to Bloomingdale in connection with others who are not, and that experiment, gentlemen, as I have said, he stated that he would not repeat under any circumstances. Now, another one of his peculiar acts alleged was that he had a peculiar diet. Now that peculiar diet was that at that time he was becoming a vegetarian, or had become a vegetarian, and fifteen years ago that was peculiar. Why, they have millions, or at least hundreds of thousands of vegetarians to-day. But, that was peculiar and they had to find some peculiarities. He was peculiar because he was some years ahead of his time. They also said that he was a t[illegible] totaler. Well, gentlemen, that is most remarkable, becaus[illegible] drinking is supposed to be one of the primary and principal causes that fill our insane asylums, and yet they allege that he was a teetotaler, that he did not get drunk. Evidently that was a mistake. The sixth statement they make is that Mr. Chaloner pointed out certain lines in a picture of the Sphinx, claiming they were his initials. Utterly false. The seventh is, his name carved over mantels. That is false, gentlemen, except that it is a fact, as Mr. Chaloner alleges, that there were lines, and we have all seen lines in marble that by a peculiar natural twist do in some way resemble initials. That was merely a casual observation. We have all seen those things. In fact, at the capital at Albany, they are pointed out. The eighth statement which he alleges is utterly false, was that a spirit commanded him by its voice. Now, the only possible foundation for that was that in the trance state Mr. Chaloner's own voice spoke, he heard his own voice. But he repeatedly disclaims any belief in any spiritualism or in any idea that there was anything supernatural, simply a scientific phenomenon. He began to study Psychology when he went to Columbia in 1883, and read a number of books that treated with Psychology, and he has always taken an interest in Psychology since that time. "The Law of Psychic Phenomena," by Thompson J. Hudson, which he read in 1895 or 1896. After a while learned men like Professor James of Harvard, took a lively interest in Psychology, and Professor James wrote a book entitled "The Principles of

Psychology," in which he specifically cites instances of automatic writing. Now, gentlemen, these college professors are apparently suffering from delusions. Every year, gentlemen, brings fresh discoveries and greatly increased interest in these matters, and we are still children. Like electricity, we know that it exists, but we do not know why or wherefore. The deposition which you gentlemen will have presented to you shows that Mr. Chaloner has made a most analytical study of Psychology, and has a most intimate knowledge of it. He has written a brief work on it called "The X-Faculty or the Pythagorian Triangle of Psychology," which you gentlemen will have to consider, and which will be presented to you. This is an absolutely new theory with Mr. Chaloner, and is unqualifiedly original in conception and treatment. The ninth statement in the ninety-seven proceedings is in regard to the fact that he stated that nothing could harm him, that he neglected the ordinary clothing and proper food. Mr. Chaloner states that this is ridiculous and false, except that he goes to his bathroom in his bare feet occasionally when the temperature permits, the same as everybody else. Mr. Chaloner defines those who have attempted to put him out of the way as his relatives, the alienists, their tools and others, and third, the legal minds that overlook and take care of the legal points in the proposition. In regard to this going to his bathroom in bare feet, when he received Moses Allen Starr he was in his underclothes and was about to take a bath, and did not want to keep Dr. Starr waiting, and consequently Dr. Starr was admitted under these circumstances. In regard to a statement that he said he was immortal, he says in that connection, page 33, of his deposition, "I believe that my soul is immortal. I believe that absolutely. As for myself I expect to die like any other man." Why, gentlemen, that is the Christian belief, and Chaloner has always been a devout Christian gentleman, and the very fact, the almost sacreligious statement that he said that he was immortal, when it simply applied to the immortality which we all hope for hereafter, shows to what length these men went in their desire to earn their fee. He states in this connection

that when he dies he wants to be buried at "The Merry Mills," at his residence, Cobham, Virginia, and indicates the very spot. He wants even in death to be among those he knows are his friends.

Now, gentlemen, in 1897, Stanford White possessed a limited power of attorney. He wanted a full power, but Chaloner was a pretty good business man and refused to give it to him. But Stanford White did become possessed of a limited power of attorney, which he undoubtedly secured in order that Mr. John Armstrong Chaloner's money and estate should not be neglected while he was in Bloomingdale, and he acted for about two years in that capacity, until his brother-in-law, Prescott Hall Butler, was appointed in 1899. Now, Prescott Hall Butler was a member of the firm of, I believe at that time, Evarts, Choate & Beaman, which is practically the same firm which represents the defendant in this action, and of which the defendant is a member. At that time, remember, in 1897, Mr. Chaloner received no notice of any proceedings. He was expecting to return to Virginia, had informed the people at his home that he was coming back there very shortly, when Dr. Starr was introduced as an oculist. Dr. Starr examined Mr. Chaloner's eyes at that time. Of course, gentlemen, there is no contention that Dr. Starr was there—I don't imagine—on the part of the defendant, to examine Mr. Chaloner's eyes. He was there to have him committed, and possibly Mr. Chaloner connects that as a phase of the conspiracy, possibly others might so construe the act of a man who comes there ostensibly as an oculist to examine one's eyes, but really as an alienist, not to examine him as to his sanity, but to find reasons or possible reasons or alleged reasons to have him committed as insane. Now, gentlemen, he did go into a trance at that time. He did not suspect that these men were there to send him to Bloomingdale, or anywhere else. He did go in a trance for them, and that is what they were there for, to get him to go into a trance. So shortly afterwards, March 10, 1897, the alienists swore to the conditions that they said existed, and went there one night to take Chaloner away, and Chal-

oner refused to go. He refused to go with them, and they very sensibly left, without trying to take him by force, because that would have undoubtedly attracted attention, and their scheme might have been nipped in the bud; but the next day two policemen called in plain clothes, and Mr. Chaloner, a lawyer and a good citizen, and probably regarding the whole matter as farcical, went with these officers, talked in the most friendly way with them, and recognizing the authority of the law, and not knowing at that time that the laws of our State could use the police force for such a purpose, he accompanied them to Bloomingdale. Bloomingdale, by the way, gentlemen, is a department of the Society of the New York Hospital of this city. It is practically the Psychopathic ward. It is a great, big, money-making proposition.

Mr. Choate: You do not mean to make that statement in earnest to this jury?

Mr. Miller: It will be proved in evidence. I don't think Mr. Ware is stating anything that will not be in evidence in this case.

Mr. Ware: I have not one word to retract, if Your Honor will allow me to proceed.

The Court: Very well. It does not seem to help very much to explain the case to assert that Bloomingdale is a money-making proposition. We will not proceed any further to-day, and I will give twenty minutes to-morrow morning to finish your opening. I think you should have been a little more concise in your opening. It should not take a very long time in opening to state the substantial facts of any case, to the jury. All they want is a mere outline so that they will understand the case.

Adjourned to Tuesday, February 20, 1912, at 10:30 A. M.

New York, February 20, 1912.

Mr. Ware resumes his opening statement to the jury, on behalf of the plaintiff:

Mr. Ware: If Your Honor pleases, Mr. Foreman and Gentlemen of the Jury. At the closing yesterday I referred to Bloomingdale as an annex of the Society of the New York Hospital, which it is. Mr. Chaloner, as you remember, was a vegetarian at that time, and he was paying the munificent board of $100 per week, and Mr. Chaloner was a vegetarian. In the little less than four years that he stayed at Bloomingdale, gentlemen, he paid them approximately $20,000. When I say he paid them, he had nothing to do with fixing the rate, but it was paid out of his money, and incidentally he had to pay extra for everything he had which was not on the regular bill of fare, and that was so unsatisfactory to Mr. Chaloner that he ordered a great many things, a great many articles of food from the city, because he could not eat what was given to him, alleging that it was either decayed or adulterated, or unfit, gentlemen, to be eaten by this $100 a week boarder. During his stay there two members of his family called upon him. One was his sister, Mrs. Elizabeth Chanler Chapman, and I can only just dwell for a moment on each one of these points. During their conversation the fact that the windows were barred, heavily barred, attracted her attention, Mr. Chaloner referred to it, and she naively remarked that that was to prevent him from running away. That is what it was. Mr. William Astor Chanler called upon him and at the latter part of the conversation which he had with him, Mr. John Armstrong Chaloner said that when he got out, as he expected to—he always expected to, gentlemen—was confident that he would—that he intended to prosecute his brothers and his cousin who had had him committed there, for perjury, that he claimed and asserted that they committed, and he asked his brother, William, to convey that information to the three who had him committeed. Now, gentlemen, on July 3, 1897, four months after he had arrived at that institution, he sent a most remarkable letter to Hon. Micajah Woods, who was the Commonwealth's Attorney at

Charlottesville, Virginia, Charlottesville, Virginia, being within a few miles of Cobham, and that gentleman occupying a very unique and prominent situation at the Virginia Bar. That letter, gentlemen, is one of the most remarkable samples of literature, and in itself is absolutely convincing that at that time Mr. Chaloner was absolutely sane, and it is a most splendid example of this sane, though indignant gentleman, protesting that he was wrongfully restrained of his liberty. The first act on arriving at Bloomingdale was an attempt to go through his pockets. They let Mr. Chaloner keep his scarf pin, which in the hands of a really insane person might become a very dangerous weapon. In the spring of 1899 he had a weakness culminating in a sharp attack of pain in a part of the vertebrae, which attack, in Dr. Lyon's opinion, resulted from the surroundings and from the fact that at that time Mr. Chaloner took his meals in bed. The fact is that Mr. Chaloner found it absolutely impossible, without undergoing great pain, amounting almost to torture, to sit down. He told Dr. Lyon before the 1899 proceedings specifically not to represent him, but to state that Mr. Chaloner was physically unable to attend, and Mr. Chaloner was not present at those proceedings before the Sheriff's Jury and was not represented. He had no opportunity to file affidavits setting forth his physical condition. No one called on Mr. Chaloner either as a representative of the court or as an attorney or guardian. Now, gentlemen, I cannot go into the visits in 1898 of the two alienists, Dr. Austin Flint and Dr. Carlos McDonald, but suffice it to say that they went there for the alleged purpose of examining Mr. Chaloner, as to his mental condition, and as the hired representatives of the people who had had Mr. Chaloner committed to Bloomingdale. One of the delusions which they alleged Mr. Chaloner had was in a resemblance to Napoleon Bonaparte, and you gentlemen will have photographs produced here which I think will lead you to undergo somewhat similar delusions, if it is a delusion. It is a remarkable fact that Mr. Chaloner's features do resemble those of Bonaparte, but he does not claim for a moment that there is anything

supernatural about that whatever, simply a remarkable coincidence. Now, Henry Lewis Morris was the family lawyer of the Rutherfurds and Chanlers. He was the lawyer who was in charge of the estate of the Chanlers at that time, and he was the lawyer who, Mr. Chaloner alleged, was lax in not having more frequent accountings than every five or ten years, as the case might be. Now, Henry Lewis Morris had been a member of the Board of Governors of the New York Hospital, which is the other name for Bloomingdale, and Fordham Morris, his cousin, was a member of the Board of Governors of that institution in 1897. Mr. Chaloner had an altercation with his keeper in the summer of 1898. This keeper drank to excess, and when drinking was surly and quarrelsome, but earnest and good hearted when sober. July 5, 1898, Chaloner and the keeper had a conversation regarding a spree which the keeper was just getting over, and Chaloner told the keeper to leave the cell, and he refused and sprang at Chaloner, this keeper being six feet tall and weighing about 200 pounds, and Chaloner some two inches shorter and some thirty pounds more or less, less in weight, and a struggle ensued, and the keeper pressed his thumbs on Chaloner's throat, they struggled to the window and Chaloner called for help, and the only keeper in sight who heard the call for help immediately disappeared. He did not want to be mixed up in this, but finally other keepers did come in, and the keeper was taken away from Mr. Chaloner without any very serious injury other than the fact that these affairs might have an unpleasant effect upon one's nervous system. On another occasion, a maniac, a man who was undoubtedly insane and violently so, strayed into Mr. Chaloner's room. That led to an unpleasant encounter, which, however, resulted without any harm to Mr. Chaloner physically. Drs. MacDonald and Flint were the alienists who visited Bloomingdale at this time preparatory to the 1899 proceedings, the evidence all shows, and I don't think it will be denied, that they were there in the interest of those who wanted to keep Mr. Chaloner in Bloomingdale, but the first question that he put to them when they entered on their first visit was, "Do

you represent anybody?" To which Dr. MacDonald answered, "No." Mr. Chaloner then told them all the causes that led to his being there, all about himself, possibly hoping that they might give him a fair deal. Dr. MacDonald said, in reply to a question, Mr. Chaloner complained of his spinal trouble at that time, on the last visit of these gentlemen. Drs. Flint and MacDonald say that they formed the opinion that he had no disease of the spine. How did they form such an opinion? Mr. Chaloner at this time began to recover from his spinal trouble, and took long walks. He was regarded as a model prisoner, and had arranged a plan whereby he received his mail under an assumed name at a neighboring village, and on Thanksgiving Eve, 1900, he bade good-bye to Bloomingdale and took French leave, which at that time seemed the only way to leave the institution. He had tried for years to get out by legal means, without success. He had communicated with various lawyers, but when the vital moment came, they seemed to fail him. We claim, gentlemen, that the influences behind those who wanted to keep Mr. Chaloner there were too strong to be opposed by a prisoner. After getting to New York he telegraphed that afternoon to Dr. J. Madison Taylor, of Philadelphia, and proceeded to that city, where he remained from November, 1900, to June, 1901, under a second assumed name, baffling his pursuers, who were searching everywhere for him. After that he spent some weeks in Concordville, Pennsylvania. Now, we arrive at the epoch-making point of his career, the proceedings of November 6, 1901, before the County Court of Albemarle County, Virginia, which is filed as an exhibit in this case. In those proceedings Dr. J. Madison Taylor, Dr. R. B. Shackelford, Dr. J. M. Page of the University of Virginia, Dr. H. H. Darlington, of Concordville, Pennsylvania, where Chaloner remained some six weeks, and more than twenty other witnesses all testified to Mr. Chaloner's sanity and competency, and Dr. Horatio Curtis Wood, Dr. James, Professor of Psychology in Harvard University, Thompson J. Hudson, author of "The Law of Psychic Phenomena," and J. Madison Taylor, of Philadelphia, all testify as to his being

sane, competent, and of more than ordinary average intelligence. In such proceedings the court did adjudge and decree, page 651 of the brief, that you can read in full, but I will just give you a short excerpt, by order entered November 6, 1901, as follows:

"The said court having heard and considered the evidence of the witnesses produced, both of medical men and other citizens, and having considered the several medical opinions filed touching said Chaloner's mentality, and having examined the said J. A. Chaloner, is of the opinion that said John Armstrong Chaloner is a sane man, capable of taking care of his person and managing his estate."

That ought to have ended the whole matter, but on November 19, 1901, two weeks afterwards, Mr. Sherman, another member of the same firm that Mr. Prescott Hall Butler belonged to, was substituted for that gentleman who was at that time a committee, two weeks after he, Mr. Chaloner had been adjudged sane and competent. They knew all about it, and in fact the proceedings had been adjourned in order to allow Mr. Moon, their Virginia representative, to present their case, and Winthrop Astor Chanler, one of the committing brothers, deposes that he knew all about the proceedings in 1901, and had met Mr. Moon at the office of Evarts, Choate & Beaman at that time, and Mr. Sherman knew it too. There was notice at that time given by Mr. Chaloner to Mr. Sherman. There was no notice, as I am reminded, given to Mr. Chaloner at that time that Mr. Sherman was going to have himself appointed a committee for Mr. Chaloner, which Mr. Chaloner undoubtedly would have opposed, and in the answer to Mr. Sherman that fact is admitted.

Now, gentlemen, there is no question but what one's own friends and neighbors are more competent to state just what they think of one's competency and sanity, and it is rather absurd to suppose that the people down there who lived about Mr. Chaloner would want any man who is dangerous in the vicinity, and yet we have over twenty—some twenty of these friends and neighbors and business associates of the highest standing in the community, we have the affidavit of five or

his business associates and acquaintances from the State of North Carolina, Roanoke Rapids, and that neighborhood. All of these are in Mr. Chaloner's undoubted favor, and they will be presented to you in detail. In connection with the North Carolina enterprise I can only refer you at this time and ask you to read page 832 of the brief, which will be handed to you, which will be part of this case. In regard to the change of name which took place some years later, there were two principal reasons. One was that the spelling "Chaloner" was the original and ancient spelling of the name of "Chanler," and as Mr. Chaloner contends, the correct spelling, "Chanler" being a corruption—I mean in the spelling. The other one was that he did not want to be confused and confounded with these brothers who had treated him so badly. He had several litigations, gentlemen, but he was successful universally. He showed his acumen, not only as a lawyer, but because he was right, and right is bound to prevail. I submit, gentlemen, in regard to the Gillard affair, which will be called to your attention, that in that case, which was where a man named Gillard, who had been beating his wife, and she ran to Chaloner's house for protection and Chaloner came downstairs—with her children with her, five, I believe—Mr. Chaloner, hearing a noise in his dining room, ran downstairs and found this man Gillard beating his wife with iron tongs, one of these old-fashioned heavy tongs, and the woman was lying on the floor, and Chaloner rushed at Gillard and tried to save the woman, and they struggled and Gillard struck Chaloner and beat him to his knees, and Chaloner and Gillard continued to struggle, and Mr. Money, who was Mr. Chaloner's secretary, came into the room, seized Gillard from the back, and in the ensuing wrestle, which was between Gillard and Chaloner in front of him for the possession of a gun, this gun was discharged, and the bullet went into Gillard's head. Gillard was trying to point the gun at his wife, trying to discharge the gun at her, and Chaloner was trying to prevent this man from killing his wife, which he had already started to do. Remember, gentlemen, that this man Gillard was not only beating his wife

when Chaloner came into the room, but Gillard struck Chaloner before he had an opportunity to do anything and beat him down on his knees on the floor. Why, gentlemen, the coroner's jury in that case acquitted Mr. Chaloner, not only promptly, but practically as a man who was a credit to the community. He had shown that he could not only take care of himself under those circumstances, but that he could take care of a poor, defenseless woman, and he did it.

The Court: Your time has expired, Mr. Ware.

Mr. Ware: Will your Honor give me five minutes more?

The Court: Yes.

Mr. Ware: We will prove that at all the times and in all the proceedings against Mr. Chaloner that he was a resident and citizen of the State of Virginia, and that he was lured into this State, and that the proceedings in this State are null and void and have no standing in this court. Now, gentlemen, in the complaint Mr. Chaloner alleges that Mr. Sherman came into possession of the moneys and stocks, securities and various property of Mr. Chaloner, that were in the hands of Mr. Prescott Hall Butler, his predecessor. We will show you, I can't go into the details of this complaint, which is part of this case, and the principal part of it, and which you gentlemen can read at your leisure, but he further states that Mr. Sherman, the defendant, "did unlawfully take, collect, have and receive for the use of this plaintiff, but without the consent of authority of the plaintiff, divers sums of money, chattels and negotiable securities, the exact nature and amount whereof are well known to the defendant, but not accurately known to this plaintiff, but which include, among other things, the following moneys and property," and then he goes on and states the properties which, as far as Mr. Chaloner could learn, had been received into the hands of Mr. Sherman. That is all he wants, gentlemen, what Sherman received from Prescott Hall Butler. He is only asking for his own property.

Now, I don't want to go further into this complaint, except to ask you gentlemen to do what that complaint requests, "that by reason of the premises, and of the aforesaid

wrongful and illegal acts and misconduct of the defendan
the plaintiff has suffered injury and damage in the sum o
not less than $263,523.65, with interest thereon from Apr
4, 1904, wherefore, plaintiff demands judgment against th
said defendant for the said sum of $263,523.65, with intere
from April 4, 1904, besides the costs and disbursement
herein." And now, gentlemen, only a word more in regar
to the deposition of the Princess Troubetzkoy, as the lad
is now, and Dr. Shackelford, which were the first deposition
taken in this case outside of Mr. Winthrop Astor Chanler'
and I will simply tell you, and you will be able to follo
substantially everything that has been said, that the Prince
Troubetzkoy, who lived with Mr. Chaloner as his wife, fro
1888 to 1894, six years, testifies that in all her acquaintanc
with him, she found him rational and sane, he never threa
ened her, there never was any trouble practically except tha
they were both of artistic temperaments, and finally agree
to disagree, but as to his sanity his wife—and a wife has
pretty good opportunity to get an insight into a huband'
character and disposition and mentality—testifies that he wa
absolutely safe and sane. Dr. Shackleford says—he was hi
family physician at the time he was taken away from Vi
ginia in 1897—and he testifies to the same effect. Every on
that knew him testifies in his favor, and the only testimon
to the effect you gentlemen will be able to judge when it i
presented to you.

Now, gentlemen, I have stated briefly, because I hav
had to cover a period of fifteen years, what seemed to m
to be the salient facts in this case, and we will proceed t
substantiate them in the evidence.

Mr. Choate opens to the jury in behalf of the defendan
as follows:

Mr. Choate: Gentlemen—

The Court: The only point in the case it seems to me
I have examined these pleadings—the only question here i

whether the order appointing Mr. Sherman is a void order, or is a valid one, and the evidence in the case should be confined to that point, in my opinion.

Mr. Choate: Of course that depends on the validity of the 1899 order appointing Prescott Hall Butler.

The Court: If the court did not get possession of this property originally it did not have any right to appoint Mr. Sherman. If it had a right in the order appointing Mr. Butler, it had a right to appoint his successor.

Mr. Choate: Gentlemen, as his Honor has said, there is only one question in this case. The Supreme Court of the State of New York has passed upon the main question here. It decided that in 1899 the plaintiff John Armstrong Chaloner was insane. It then appointed Prescott Hall Butler, deceased, as committee, and in 1901, in a proceeding which I don't think anybody questions seriously, Mr. Sherman was substituted for Mr. Butler. Now, that decision having been reached by a court of competent jurisdiction cannot be attacked here or anywhere else on the ground that it was incorrect. You cannot offset a decision of that sort by coming before a jury in another court, and asking it to find that that decision was wrong, so that the question of whether or not Mr. Chaloner was insane at the time that judgment was rendered is not before you. The attempt here is to show that that decision was utterly void, and that attempt is based on the contention that the court lacked jurisdiction. That is the only contention raised in the complaint. Now, a court like the Supreme Court of the State of New York has jurisdiction over a person appearing before it on what the plaintiff likes to call a charge of lunacy, if notice has been served upon that party personally. That is the only absolute necessity. Now, it is not disputed in this case that notice was served on John Armstrong Chaloner at every stage of the proceeding, by which he was adjudged a lunatic. The real essence of this case is that he says that the notice was no good, because at the time served he was confined at Bloomingdale, and also sick in bed for 3 weeks—utterly unable to appear in court on the evidence, so that he says that deprived

him of an opportunity to be heard, which is the essence of the notice. There you get the case in a nut shell, the gist of it. If he had an opportunity to be heard the notice was good, the decision stands, and he has no case here. Now, on that question we shall show you out of his own mouth, as well as otherwise, that at the time, in June, 1899, when the jury sat upon his case and found him insane, he not only had notice, but so far from being confined in Bloomingdale, he had been on parole there for a month or more, free to walk about the country in Westchester to his heart's content, and he remained on parole in that fashion during the entire rest of his stay, so that his confinement amounted to nothing except an obligation in honor to return to the asylum at six o'clock at night, after leaving at ten o'clock in the morning, and under that parole he was in the habit of walking all over Westchester sending for his counsel whenever he liked, and perfectly free to arrange his defense as well as free to go before the jury. We shall show you that he did not go before the jury merely because he preferred not to go. He said that he was incapacitated, but he did not make any effort to go. He even refers to his refusal to go before the jury as a bluff. Now, the rest of this enormous mass of argument which has been offered to you in opening here by my learned adversary, is devoted to a proposition which is perfectly unimportant if what I have been telling you is true, that is, that there was any confinement at the time of the 1899 proceedings that prevented him from attending the hearing. But, suppose that the confinement in Bloomingdale did prevent him from making his defense as well as he could, that is no answer to our contention that that confinement was legal. Realizing that, our opponent has worked up this enormous conspiracy theory, has seriously argued before you that something like seventy-five or a hundred of the most eminent and respected citizens of this city and State have conspired to commit the infamous crime of forcing John Armstrong Chaloner into an insane asylum.

Mr. Miller: There is no such allegation in this complaint.

Mr. Choate: There is such an allegation in the opening.

Mr. Miller: No, sir; it is confined to the people who put him there.

Mr. Choate: As to that, we shall let the matter rest practically on the plaintiff's own testimony, except in so far as certain of the allegations will be shown to be perfectly absurd. I will give you one example of the extent to which the allegations of conspiracy are mere delusions. The plaintiff after attacking all the governors of Bloomingdale, asserts that the lawyers whom he attempted to retain were got at by the other side. He asserts that the late David B. Hill, Senator David B. Hill, who came to see him in Bloomingdale shortly after he was brought there, was got at by the other side, and for that reason declined to act for him generally. The reason that he asserts that, the proof of it that he gives, is that shortly after the adjudication, David B. Hill was retained to present for the Chanler family in the Supreme Court of the United States the great case of the Delano transfer tax, which involved great sums of money, so he says the Honorable David B. Hill was bribed by this retainer to refuse to act for him. That looks fairly serious, until you examine the case of the Delano transfer tax. While it was true that David B. Hill was brought into that case, he appeared against the Chanlers and not for them. That is one example. In all probability we shall not attempt to detain you gentlemen here while we attempt to rebut all the enormous mass of accusations which is offered. We make this observation upon it only, that all of it is based purely on surmise that the only charitable view to take of it is that it was the work of an insane man. Now, as to the question of insanity. As his Honor has already pointed out, the question whether Mr. Chaloner is insane at the time of this proceeding is not before you.

Mr. Miller: If your Honor pleases, your Honor did not say that, you did not say that the insanity of the plaintiff is not in issue. That goes to the root of the matter.

The Court: I don't think you should interrupt Mr. Choate. He should be allowed to open his case in his own

way, but it seems to me that the jury understands the issue pretty well already.

Mr. Choate: I have only one word more.

Mr. Miller: There is an issue as to the present sanity of Mr. Chaloner.

Mr. Choate: I think your Honor has ruled that the present sanity is not in issue here.

The Court: Unless something occurs to change my view, I shall not admit any evidence on the question whether he is sane or insane at the present time, or at any previous time. The Supreme Court decided that at a certain time he was insane, and in that decision appointed a committee to take care of his property. This suit brought against that committee for the conversion of the property, on the theory that he has no right to detain it, it having been demanded and that he has not given it over, which amounts to a conversion.

Mr. Miller: But subsequent to that decision and that appointment in this State, the contention here is that another State having jurisdiction, subsequently declared him sane, and the Supreme Court of Appeals here has said that that judgment cannot be ignored. Therefore we stand here for the purpose of this case also on that decree of sanity, the appointment of this defendant as committee being after the rendering of that decree which the Court of Appeals says cannot be ignored.

The Court: I will hear you on that point when it arises, but my present impression is that any action by the court in Virginia is entirely immaterial to this case.

Mr. Miller: The Court of Appeals has said that that court in Virginia is entirely immaterial to this case.

The Court: It seems to me at the present time that the Supreme Court of the State of New York has this property in its custody by its officers, and that no other court can take it away from it, or has any right to interfere with it, and that the only court that can release it is the Supreme Court, unless, in point of fact in the proceedings by which it took possession of the property it was without jurisdiction.

Mr. Miller: Has your Honor read Judge Noyes' decision in the Court of Appeals?

The Court: I have.

Mr. Miller: That opinion says that the 1901 judgment in Virginia cannot be ignored under the pleadings in this case, under their answer.

The Court: He says, as I recall it, that there is an issue upon that subject as to which evidence might be given. I understand that there is an issue raised here as to the sanity of Mr. Chaloner, but because one side asserts that he is sane, and the other side asserts that he is insane, does not make the fact of his sanity or insanity material. This is a simple suit for conversion. If he is sane or if he is insane, he is entitled to his property if there is no legal committee. If Mr. Sherman is not a legal committee of his estate, he has no business to hold it, and if Mr. Chaloner was not sane, of course he is entitled to his property, and if he is sane, he is equally entitled to his property, if there is no other legal officer appointed to take charge of it. That seems to me to be all there is in the case.

Mr. Miller: Your Honor does not take the position that the decision of the Court of Appeals saying that the Virginia decision cannot be ignored is of no effect. I shall ask your Honor before finally ruling on that question, to examine the Court of Appeals' opinion more carefully on that subject.

The Court: Very well.

Mr. Choate: I was merely referring to the issue technically raised upon the pleadings as affecting his capacity to sue, and I say as to that we shall offer no evidence whatever, and will leave the question of his present sanity to be judged on his own output.

I have one word to say, however, as to the allegations of misconduct and conspiracy on the part of the Chanler family. That word is this: We do not represent the Chanler family in any sense. Mr. Sherman came into this case in 1901, two years after the conspiracy, if it ever existed, was formed, and after Mr. Chaloner had escaped by the process of walking off and breaking his parole. Mr. Sherman is an

entirely extraneous factor, he has nothing to do with the conspiracy if there was one, but at the same time I want to call attention to a fact which will fully appear from Mr. Chaloner's own statement, that so far from the allegations of the commitment papers being false, as you have been told, they are actually true. My learned friend tells you that it is a lie, and that Chaloner says it is a lie, that he had been behaving queerly in Virginia, that it is a lie that he had been limiting himself to a peculiar diet. These were the things that the petitioner said about it. You will see from Chaloner's own deposition, the plaintiff's own deposition that he had spent his time behind locked doors down in Virginia all by himself, that his peculiar diet, which he said was nothing but a vegetarian diet, consisted of waffles and tea three times a day for two or three months, and that he had injured himself by carrying red hot coals across the room, dumping them out of the window. In the same way you will see that the statements of Drs. Fuller and Starr as to his peculiar actions on which they based their statement that he was insane in 1897, were true. The plaintiff says himself that he did tell Drs. Fuller and Starr that his initials were written in the Sphinx and on the mantel, that his coming had been foretold in the Book of Revelations, that he was inspired to lead a holy war in Europe, so we shall show you out of the plaintiff's own mouth that this was the work in good faith of a family who had the highest regard for this unfortunate plaintiff, and took the action they did take only to protect him, because he was going about armed, and was in constant danger of doing injury either to himself or someone else. As to the plaintiff himself, I want to state emphatically that we regard his ailment, or his condition, if it was not an ailment, as an unqualified tragedy. He was the most promising member of a brilliant family. He is today a most charming, entertaining man. The kind of insanity he was afflicted with, if any, was the kind which did not detract in the slightest from the brilliancy of his mind, not even from his logical faculty, but which merely furnished him with delusions, and which rendered him dangerous to

himself and others. So far as we are concerned we have been willing at all times, and we understand that the family has been willing at all times, and he himself testifies that his family offered in the early stages of this proceeding, to make no opposition whatever if he would come up here and submit the question of his sanity to the New York courts, and get his property in the proper way, the only way in which he can get it, by having his committee discharged from responsibility for the property. The offer was made to him to do that at any time, and his response was that he would never demean himself to submit himself to the discredited Supreme Court of the State of New York. Since then this offer has always been open to him, he is able now to come to this court and show himself to you gentlemen, under a safe conduct procured from the Circuit Court of Appeals, and yet he does not do it. We regret exceedingly that this matter has arisen, and we wish that the defendant could be relieved from his trust. He has kept the property of the plaintiff faithfully and has increased it enormously, and has allowed the plaintiff all the Court thought he ought to have and more too. We submit our right to you with perfect confidence that you will see the narrow issue involved in this case, and that you will follow the law as laid down by the Court with strict fidelity.

EXHIBIT J.

PHILIP, H. V. N., BENEFITS BESTOWED ON HIM BY PLAINTIFF-IN-ERROR.

Deposition of 1908, Vol. I, pp. 271-274.

"In 1891 * * * I received a letter from Mr. Philip * * * offering to enter partnership with me. I wrote to Mr. Philip who was a patent lawyer, and said I was perfectly willing for him to enter my firm, provided Mr. Maxwell was willing for him to enter. * * * The result was that a partnership was formed. Mr. Philip at that time was the soliciting agent for the celebrated patent law firm of Betts, Atterbury, Hyde & Betts. I had made a patent myself, a patent roadway, which had been handled in so successful a manner by Mr. Philip, I was very willing to have Mr. Philip join with n partnership rather than to have to pay the fees to Atterbury, Hyde & Betts. * * * I agreed to take n in (Maxwell and Philip) and guarantee each one a decent living in New York, that is to say, to guarantee each one of them $1,500 paid by me, as I remember, partly in advance, out of my income. It was a gentleman's agreement, nothing in writing, because we were too high-toned. I was also to pay the office rent, stationery, office boy and everything besides this $3,000.

Now, one little rift in the lute which has, upon the evidence, a rather far-reaching effect, was that I found that Mr. Philip, talented a patent lawyer as he was, was extremely lazy, and Mr. Maxwell * * * requested me to call down, in other words, to give a very disagreeable half-hour to Mr. Philip, for the purpose of getting him to put his shoulder to the wheel and keeping it there, and not sit smoking a pipe.

We got a million dollar client, whom I got to come to the firm. * * * He was so fat, speaking figuratively, from a financial standpoint, that the salary of Messrs. Maxwell and Philip was raised to several thousand dollars—about $2,500 or $3,000 approximately. Now, I,—if I can say so without conceit, through a spirit of kindness and feeling for those who did not have as much of this world's goods as I possessed—not by my own merit of earning—I forewent all my share in this $6,000, which came in from this rich client annually, and had it divided between Mr. Maxwell and Mr. Philip, share and share alike. The original agreement was that I was to get all my law work done free gratis by these gentlemen whom I had protected from all the care of this world."

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CHALONER *v.* SHERMAN.

ERROR TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

No. 121. Argued November 16, 17, 1916.—Decided January 8, 1917.

Omission of the statutes of New York concerning proceedings *de lunatico inquirendo* (Code of Civil Procedure, 1898, §§ 2320, *et seq.*), to provide expressly that notice of and opportunity to be heard at the inquisition shall be afforded to the alleged incompetent, *held*, not violative of the due process clause of the Fourteenth Amendment, it appearing by the decisions of the highest court of the State that the requisite notice and opportunity are otherwise impliedly afforded under the state law.

In proceedings under the New York statutes, *supra*, which resulted in the appointment of a committee of plaintiff's person and estate, the plaintiff, who was committed at a private hospital at the time, was served with notice of the application to appoint a commission to inquire into his mental capacity, of the inquisition, and of the motion to confirm its finding and appoint the committee. He was physically able to attend but did not appear, ask anyone to represent him or seek an adjournment. At the inquisition, the commission and jury, after hearing witnesses, concluded that his attendance was unnecessary, and did not require it, there being evidence that if enforced it would be detrimental to his mind. *Held*, that due process was satisfied, and that the order appointing the committee was not open to collateral attack.

Subsequently the court accepted the resignation of the committee and appointed another in his stead, without giving notice or affording opportunity to be heard to the plaintiff or the other persons interested in the original proceedings. *Held*, not violative of due process.

Orders of a state court declaring a person found within the State incapable of managing himself and his affairs and appointing a committee of his person and his property within the State are not assailable collaterally by proof that he was and remained a citizen and resident of another State, or that he was served in the proceedings through being corruptly lured into the first State and there illegally committed to a private hospital, or that the adjudication of insanity

was made on perjured evidence while he was actually sane, or that his sanity and competency have been established by a later adjudication of a court of his domicile and have since continued.

215 Fed. Rep. 867, affirmed.

THE case is stated in the opinion.

Mr. Edward F. Colladay and *Mr. Sidney J. Dudley* for the plaintiff in error, *Mr. John Armstrong Chaloner*, who also filed a brief.

Mr. Joseph H. Choate, Jr., for defendant in error.

MR. JUSTICE BRANDEIS delivered the opinion of the court.

This is an action in which the plaintiff seeks damages for withholding his securities and moneys. The defendant sets up as justification that he received and held the property by virtue of two orders of the Supreme Court of New York appointing him committee of the person and estate of the plaintiff as one "incompetent to manage himself or his affairs." The validity and alleged effect of these orders were denied by plaintiff. The action was brought in 1904 in the Circuit Court of the United States for the Southern District of New York; was transferred to the District Court January, 1912, by virtue of Judicial Code, § 290, and was tried before a jury in that year. A verdict was directed for the defendant at the close of the plaintiff's case; and the judgment entered thereon was affirmed by the Circuit Court of Appeals. The case comes here upon writ of error.

The complaint alleges that the plaintiff is a citizen and resident of Virginia and the defendant a citizen and resident of New York; but federal jurisdiction was not rested solely on diversity of citizenship. The complaint alleged also that the orders of the Supreme Court of New

York upon which defendant relies are void as having been entered without due process of law in violation of the Federal Constitution. The contention was insisted upon in both the lower courts. This court has, therefore, jurisdiction to review the whole case. *Howard* v. *United States*, 184 U. S. 676, 681.

The orders under which defendant justifies were that of June 23, 1899, adjudging plaintiff incompetent, appointing a committee of his person and estate and naming one Butler as such; and that of November 19, 1901, appointing defendant as his successor. These orders were made under statutes of New York, the material portions of which are set forth in the margin.[1] The proceedings were

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[1] New York Code of Civil Procedure, 1898.

"§ 2320. *Jurisdiction; concurrent jurisdiction.*

"The jurisdiction of the supreme court extends to the custody of the person, and the care of the property, of a person incompetent to manage himself or his affairs, in consequence of lunacy, idiocy, habitual drunkenness, or imbecility arising from old age or loss of memory and understanding or other cause. . . .

"§ 2322. *Committee may be appointed.*

"The jurisdiction, specified in the last two sections, must be exercised by means of a committee of the person, or a committee of the property, or of a particular portion of the property, of the incompetent person, appointed as prescribed in this title. The committee of the person and the committee of the property may be the same individual or different individuals, in the discretion of the court.

"§ 2323. *Application for committee, by whom made.*

"An application for the appointment of such a committee must be made by petition, which may be presented by any person. Except as provided in the next section, where the application is made to the supreme court, the petition must be presented at a special term held within the judicial district or to a justice of said court within such judicial district at chambers, where the person alleged to be incompetent resides; or if he is not a resident of the state, or the place of his residence can not be ascertained, where some of his property is situated or the state institution is situated of which he is an inmate.

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held in New York City where much of plaintiff's property was located. For over two years prior to the entry of the earlier order plaintiff had been an inmate of Bloomingdale,

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"§ 2325. *Contents, etc., of petition; proceedings upon presentation thereof.*

"The petition must be in writing, and verified by the affidavit of the petitioner, or his attorney, to the effect that the matters of fact therein stated are true. It must be accompanied with proof, by affidavit, that the case is one of those specified in this title. It must set forth the names and residences of the husband or wife, if any, and of the next of kin and heirs of the person alleged to be incompetent; as far as the same are known to the petitioner, or can, with reasonable diligence, be ascertained by him, and also the probable value of the property possessed and owned by the alleged incompetent person, and what property has been conveyed during said alleged incompetency and to whom, and its value and what consideration was paid for it, if any, or was agreed to be paid. The court must, unless sufficient reasons for dispensing therewith are set forth in the petition or accompanying affidavit, require notice of the presentation of the petition to be given to the husband or wife, if any, or to one or more of the relatives of the person alleged to be incompetent, or to an officer specified in the last section. When notice is required, it may be given in any manner which the court deems proper; and for that purpose, the hearing may be adjourned to a subsequent day, or to another term at which the petition might have been presented.

* * * * * * * *

"§ 2327. *Order for commission, or for trial by jury in court.*

"Unless an order is made as prescribed in the last section, if it presumptively appears, to the satisfaction of the court from the petition and the proofs accompanying it that the case is one of those specified in this title, and that a committee ought, in the exercise of a sound discretion, to be appointed, the court must make an order directing either.

"1. That a commission issue, as prescribed in the next section to one or more fit persons designated in the order, or

"2. That the question of fact arising upon the competency of the person, with respect to whom the petition prays for the appointment of a committee, be tried by a jury at a trial term of the court.

* * * * * * * *

"§ 2328. *Contents of commission.*

"The commission must direct the commissioners to cause the sheriff

a private hospital near that city. At each stage in the proceeding leading up to the order of June 23, he was personally served there with notice and was given an opportunity to be heard. Thus he had notice of the motion, on May 19, to appoint the commission *de lunatico inquirendo;* of the inquisition on June 12; and of the mo-

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of a county, specified therein, to procure a jury; and that they inquire, by the jury, into the matters set forth in the petition; and also into the value of the real and personal property of the person alleged to be incompetent, and the amount of his income. It may contain such other directions, with respect to the subject of inquiry, or the manner of executing the commission, as the court directs to be inserted therein.

* * * * * * * *

"§ 2330. *Jury to be procured. Proceedings thereupon.*

"The commissioners, or a majority of them, must immediately issue a precept to the sheriff, designated in the commission, requiring him to notify, not less than twelve nor more than twenty-four indifferent persons, qualified to serve, and not exempt from serving, as trial jurors in the same court, to appear before the commissioners, at a specified time, and place, within the county, to make inquiry, as commanded by the commission. . . .

"§ 2331. *Proceedings upon the hearing.*

"All the commissioners must attend and preside at the hearing; and they, or a majority of them, have, with respect to the proceedings upon the hearing, all the power and authority of a judge of the court, holding a trial term, subject to the directions contained in the commission. Either of the commissioners may administer the usual oath to the jurors. At least twelve jurors must concur in a finding. If twelve do not concur, the jurors must report their disagreement to the commissioners, who must thereupon discharge them, and issue a new precept to the sheriff, to procure another jury.

"§ 2332. *Return of inquisition and commission.*

"The inquisition must be signed by the jurors concurring therein, and by the commissioners, or a majority of them, and annexed to the commission. The commission and inquisition must be returned by the commissioners, and filed with the clerk.

* * * * * * * * *

"§ 2334. *Proceedings upon trial by jury in court.*

"Where an order is made, directing the trial, by a jury, at a trial

tion to confirm the inquisition and for appointment of a committee on June 23. Such notice and opportunity to be heard at the inquisition was required by the law of New York though not expressly recited in the statute; *Matter of Blewitt*, 131 N. Y. 541; *Gridley* v. *College of St. Francis Xavier*, 137 N. Y. 327; *Matter of Fox*, 138 App. Div. 43. Plaintiff was physically able to be present at this hearing. But he did not appear, did not send anyone to represent him, nor ask for an adjournment. At the inquisition the commission and the jury, after hearing witnesses, concluded that his attendance was unnecessary and did not require him to attend. There was evidence

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term, of the questions of fact, arising upon the competency of the person, with respect to whom the petition prays for the appointment of a committee, the order must state, distinctly and plainly, the questions of fact to be tried; which may be settled as where an order for a similar trial is made in an action. The court may, in that or in a subsequent order, direct that notice of the trial be given to such persons, and in such a manner as is deemed proper. The trial must be reviewed in the same manner, with like effect, and, except as otherwise directed in the order, the proceedings thereupon are, in all respects, the same, as where questions of fact are tried, pursuant to an order for that purpose. The court may make inquiry, by means of a reference or otherwise, as it thinks proper, with respect to any matter, not involved in the questions tried by the jury, the determination of which is necessary, in the course of the proceedings. The expenses of the trial, and of such an inquiry, must be paid by the petitioner.

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"§ 2339. *Committee under control of court; limitation of powers.*

"A committee, either of the person or of the property, is subject to the direction and control of the court by which he was appointed, with respect to the execution of his duties; and he may be suspended, removed, or allowed to resign, in the discretion of the court. A vacancy created by death, removal, or resignation may be filled by the court. But a committee of the property can not alien, mortgage, or otherwise dispose of, real property, except to lease it for a term not exceeding five years, without the special direction of the court, obtained upon proceedings taken for that purpose, as prescribed in title seventh of this chapter."

that his enforced attendance would be detrimental to his mental health.

As the plaintiff had notice and opportunity to be heard at each stage of these proceedings the essential elements of due process of law were fully met, and the court had jurisdiction to enter that order. It is not open to collateral attack, although plaintiff was then under commitment at Bloomingdale. See *Simon* v. *Craft*, 182 U. S. 427. The order of November 19, 1901, accepting Butler's resignation as committee and appointing defendant in his place, was made by the court without notice either to the plaintiff or to the other parties to the original proceedings. But this was a mere substitution of one officer of the court for another. No substantial right of the plaintiff was affected. Due process does not require notice and opportunity to be heard in such a proceeding; and the irregularity, if any, was not such as to prevent the court from exercising jurisdiction to determine the matter.

The validity of the orders was assailed and their effect contested also on other grounds. It was contended that plaintiff had been corruptly lured from his home in Virginia to New York in March, 1897, and then illegally committed to Bloomingdale and that he could not otherwise have been served in New York at all in the 1899 proceedings; that in 1899 plaintiff was a resident of Virginia; that the adjudication of incompetency in 1899 was made on perjured evidence; and that the plaintiff was then of sound mind and competent to manage his affairs. It was also contended that about November 6, 1901, the plaintiff being a citizen and resident of Albemarle County, Virginia, was adjudged by its county court to be of sound mind and capable of managing his person and estate; that he was such at the time of the commencement of this action and has been since. Much evidence was offered to support these contentions; but the facts if established could not overcome the defense presented by the orders

of the Supreme Court of New York. That court had jurisdiction because the plaintiff and his property were in New York; and the essentials of due process of law were met. The orders, consequently, are not void; and they are not subject to this collateral attack. See *United States* v. *Throckmorton*, 98 U. S. 61; *Hilton* v. *Guyot*, 159 U. S. 113, 207. If it be true that the orders ought to be set aside either because they were, as alleged, entered corruptly, irregularly, or inadvertently, or because owing to a change in plaintiff's condition a committee is no longer required, the remedy must be sought by a direct proceeding to that end. *Matter of Curtiss*, 137 App. Div. 584; 199 N. Y. 36. No evidence was introduced to prove that even an attempt was made to vacate or modify the orders. In this action of trover which seeks merely damages for alleged wrongful withholding of plaintiff's property, the existing orders constitute a complete defense. The evidence offered was properly excluded, and there was no error in directing a verdict for the defendant.

Judgment affirmed.